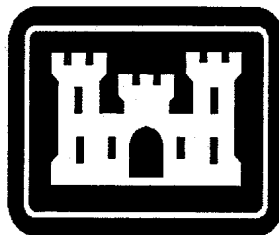


ENVIRONMENTAL MANAGEMENT PROGRAM (EMP)  
MISSISSIPPI RIVER, POOL 5  
BUFFALO COUNTY, WISCONSIN

**SPECIFICATIONS  
FOR**

**SPRING LAKE ISLANDS**

**JUNE 2004**



**US Army Corps  
of Engineers**  
St. Paul District

CONSTRUCTION PROJECT DOCUMENTS  
ENVIRONMENTAL MANAGEMENT PROGRAM (EMP)  
MISSISSIPPI RIVER  
POOL NO. 5  
BUFFALO COUNTY, WISCONSIN  
SPRING LAKE ISLANDS  
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ATTACHED UNDER SEPARATE COVER

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO. W912ES-04-B-0003	2. TYPE OF SOLICITATION <input checked="checked" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 23-Jun-2004	PAGE OF PAGES 1 OF 167
<b>IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.</b>				
4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO. W81G67-3248-8435		6. PROJECT NO.	
7. ISSUED BY CONTRACTING DIVISION USACE - ST. PAUL 190 5TH STREET E ST. PAUL MN 55101  TEL: 651-290-5419      FAX: 651-290-5706		CODE W912ES	8. ADDRESS OFFER TO <i>(If Other Than Item 7)</i> CODE <div style="border: 1px solid black; padding: 10px; text-align: center; margin-top: 10px;"> <b>See Item 7</b> </div> TEL:      FAX:	
9. FOR INFORMATION CALL:	A. NAME VERNON HADLEY		B. TELEPHONE NO. <i>(Include area code) (NO COLLECT CALLS)</i> 651-290-5418	
<b>SOLICITATION</b>				
<b>NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".</b>				
10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS <i>(Title, identifying no., date):</i>  <p>The Spring Lake Islands Habitat Rehabilitation and Enhancement Project (HREP) is located in Upper Pool 5 of the Upper Mississippi River. The project as proposed consists of islands created from dredged material from the borrow locations shown on the drawings. Additional work shall consist of rock mound island protection, rip-rap slope protection, groins, turving and plantings.</p> <p>THIS PROCUREMENT IS ISSUED UNRESTRICTED UNDER THE SMALL BUSINESS COMPETITIVE DEMONSTRATION PROGRAM (PUBLIC LAW 100-656) NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE IS 237990; SMALL BUSINESS SIZE STANDARD IS \$28.5 MILLION AVERAGE ANNUAL GROSS REVENUE OF THE CONCERN TAKEN FOR THE LAST THREE FISCAL YEARS. The estimated magnitude of construction in terms of physical characteristics and estimated price is between \$1,000,000 and \$5,000,000.</p>				
11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within _____ calendar days after receiving <input type="checkbox"/> award, <input checked="checked" type="checkbox"/> notice to proceed. This performance period is <input checked="checked" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. <i>(See 52.211-10)</i>				
12 A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i> <input checked="checked" type="checkbox"/> YES <input type="checkbox"/> NO			12B. CALENDAR DAYS  10	
13. ADDITIONAL SOLICITATION REQUIREMENTS:  A. Sealed offers in original and <u>0</u> copies to perform the work required are due at the place specified in Item 8 by 02:00 PM <u>28 Jul 2004</u> <i>(hour) (date)</i> . If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.  B. An offer guarantee <input checked="checked" type="checkbox"/> is, <input type="checkbox"/> is not required.  C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.  D. Offers providing less than <u>60</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.				

**SOLICITATION, OFFER, AND AWARD (Continued)***(Construction, Alteration, or Repair)***OFFER (Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR <i>(Include ZIP Code)</i>		15. TELEPHONE NO. <i>(Include area code)</i>
		16. REMITTANCE ADDRESS <i>(Include only if different than Item 14)</i>  <b>See Item 14</b>
CODE	FACILITY CODE	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. *(Insert any number equal to or greater than the minimum requirements stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS	SEE SCHEDULE OF PRICES
---------	------------------------

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS***(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)*

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>	20B. SIGNATURE	20C. OFFER DATE
--	----------------	-----------------

**AWARD (To be completed by Government)**

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA
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24. SUBMIT INVOICES TO ADDRESS SHOWN IN <i>(4 copies unless otherwise specified)</i>	ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)
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26. ADMINISTERED BY	CODE	27. PAYMENT WILL BE MADE BY:	CODE
---------------------	------	------------------------------	------

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

<input type="checkbox"/> 28. NEGOTIATED AGREEMENT <i>(Contractor is required to sign this document and return _____ copies to issuing office.)</i> Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.	<input type="checkbox"/> 29. AWARD <i>(Contractor is not required to sign this document.)</i> Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
--	--

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN <i>(Type or print)</i>		31A. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>	
30B. SIGNATURE	30C. DATE	TEL: _____ EMAIL: _____	
		31B. UNITED STATES OF AMERICA BY _____	31C. AWARD DATE

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**SECTION 00010 - Solicitation Contract Form****BASIC ITEMS**

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Mobilization and Demobilization For Basic Items.	1	Lump Sum	_____.	_____.
0002	Spring Lake Island Construction Granular Fill				
0002AA	First 100,000 Cubic Yards	100,000	Cubic Yard	_____.	_____.
0002AB	Over 100,000 Cubic Yards	96,000	Cubic Yard	_____.	_____.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	Spring Lake Island Construction Random Fill				
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003AA	First 30,000 Cubic Yards	30,000	Cubic Yard		
				-----	-----
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003AB	Over 30,000 Cubic Yards	15,500	Cubic Yard		
				-----	-----
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004	Spring Lake Island Construction Fine Fill				
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004AA	First 15,000 Cubic Yards	15,000	Cubic Yard		
				-----	-----
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004AB	Over 15,000 Cubic Yards	6,900	Cubic Yard		
				-----	-----
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005	Spring Lake Island Construction Sand Berm	2,321	Cubic Yard		
				-----	-----

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006	Spring Lake Islands Rock Mounds	7,120	Actual Tons		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0007	Spring Lake Islands Rock Groines	5,515	Actual Tons		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0008	Spring Lake Islands Rock Vanes	495	Actual Tons		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0009	Spring Lake Islands Riprap Bank Protection	9,030	Actual Tons		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0010	Spring Lake Islands Turf Seed Mix 1	9.80	Acre		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0011	Spring Lake Island Turf Seed Mix 2	5.80	Acre		
				-----.	-----.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0012	Spring Lake Island Plantings - Willows	1	Lump Sum		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0013	Wildlife Loafing Structures Type 1	12	Each		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0014	Wildlife Loafing Structures Type 2	32	Each		
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0015	Performance and Payment Bonds For Basic Items	1	Lump Sum		
				-----.	-----.

**TOTAL AMOUNT FOR BASIC  
ITEMS 0001 THROUGH 0015:**

-----

**OPTION 1 (Line items 0016 through 0024)**

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0016		1	Lump Sum		
OPTION	Mobilization and Demobilization for Optional Items				
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0017					
OPTION	Dredging - Minneiska Dredge Cut				

ITEM NO 0017AA OPTION	SUPPLIES/SERVICES First 10,000 Cubic Yards	QUANTITY 10,000	UNIT Cubic Yard	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0017AB OPTION	SUPPLIES/SERVICES Over 10,000 Cubic Yards	QUANTITY 5,000	UNIT Cubic Yard	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0018 OPTION	SUPPLIES/SERVICES Dredging -Mount Vernon Dredge Cut	QUANTITY	UNIT	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0018AA OPTION	SUPPLIES/SERVICES First 10,000 Cubic Yards	QUANTITY 10,000	UNIT Cubic Yard	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0018AB OPTION	SUPPLIES/SERVICES Over 10,000 Cubic Yards	QUANTITY 5,000	UNIT Cubic Yard	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0019 OPTION	SUPPLIES/SERVICES Island E3 Construction - Fine Fill	QUANTITY	UNIT	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0019AA OPTION	SUPPLIES/SERVICES First 3,000 Cubic Yards	QUANTITY 3,000	UNIT Cubic Yard	UNIT PRICE  -----	AMOUNT  -----
ITEM NO 0019AB OPTION	SUPPLIES/SERVICES Over 3,000 Cubic Yards	QUANTITY 500	UNIT Cubic Yard	UNIT PRICE  -----	AMOUNT  -----

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0020		2,070	Actual Tons		
OPTION	Island E3 Riprap Bank Protection				
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0021		240	Actual Tons		
OPTION	Island E3 Rock Groins				
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0022		2.80	Acre		
OPTION	Island E3 Turf - Seed Mix 1				
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0023		1	Lump Sum		
OPTION	Island E3 Plantings - Willows				
				-----.	-----.
ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0024		1	Lump Sum		
OPTION	Performance and Payment Bonds For Option Items				
				-----.	-----.

**TOTAL AMOUNT FOR OPTION 1 (Line Items 0016 THROUGH 0024):** \_\_\_\_\_

**TOTAL AMOUNT FOR ALL ITEMS 0001 THROUGH 0024:**

\_\_\_\_\_

## BID SCHEDULE NOTES

1. EFFECTIVE MAY 31, 1998, ALL CONTRACTORS MUST REGISTER WITH THE DEFENSE CENTRAL CONTRACTOR REGISTRATION (CCR) IN ORDER TO RECEIVE ANY CONTRACT AWARD. (Other than those made via the Government credit card program). Contractors may register on line at <http://www.ccr.gov>
2. FACSIMILE OF BIDS/PROPOSALS AND FACSIMILE OF MODIFICATIONS THERETO, WILL NOT BE ACCEPTED.
3. All Quantities are estimated except where unit is given as "EA" (EACH) or "LS" (LUMP SUM).
4. NOTICE TO LARGE BUSINESS: The U.S. Army Corps of Engineers, St. Paul District, is committed to the participation of Small Business, Small Disadvantaged Business and Women-Owned Small Business in the performance of work under this solicitation and resulting contract.

Your attention is directed to the solicitation clauses 52.219-8 entitled "Utilization of Small Business Concerns", 52.219-9 I entitled "Small Business Subcontracting Plan," and 252.219-7003 entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DOD Contracts)".

If you are a large business and the apparent low bidder with a bid exceeding \$1,000,000.00, submission of a Subcontracting Plan in accordance with the above clauses will be required. The Contracting Officer will review the plan using the following goals to assure that it represents your best efforts to maximize subcontracting opportunities. Award will not be made until the Contracting Officer approves the Subcontracting Plan.

The following subcontracting goals are informational only and not legally binding but are considered reasonable and achievable during the resulting contract from this solicitation. The goals expressed in percent of total planned subcontracting dollars are:

Small Business	57.2%
Small Disadvantaged Business	8.9%
Women-Owned Small Business	8.1%
HUBZone Small Business	3.0%
Service-Disabled Veteran-Owned Small Business	3.0%
Subcontract Reporting (SF 294 & SF 295)	100.0%

5. The apparent low bidder will be requested to provide the following information as soon as possible after bid opening:
  - a. A Financial Statement, to include a balance sheet and income statement, and
  - b. A Bank Certification of Financial Capability (line of credit).

This information will be treated as confidential. The financial statements should be not over 60 days old. If over 60 days old, a certification should be attached stating that the financial condition of the firm is substantially the same or, if not the same, the changes that have taken place.

6. All extensions of the unit prices shown will be subject to verification by the Government. In case of a discrepancy between the unit price and the extension, the unit price will govern. For further information reference clause 52.214-5000 entitled "Arithmetic Discrepancies – EFARS" in Section 00800.
7. The original bid/proposal and any modifications must be complete as to all the items on the schedule. Award will be made to that bidder whose bid is most advantageous to the Government, based on price and the price related factors included in the solicitation.
8. Unbalanced Bids. The government may reject as non-responsive any bid that is materially unbalanced between contract line item numbers or sub-items on the bidding schedule. A bid is materially unbalanced when it is based on prices that are significantly less than cost for some work and significantly more than cost for other work. A materially unbalanced bid may be rejected if the Contracting Officer has a reasonable doubt as to whether the bid will result in the lowest overall cost to the government even though it may be the low evaluated bid. Additionally, a bid that is unbalanced so as to be tantamount to an advance payment will be rejected as non-responsive even if acceptance of the bid would result in the lowest overall cost to the government. Reference is made to paragraph (d) of clause 52.214-19, "Contract Award – Sealed Bidding – Construction."
9. Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing in accordance with Section 00100, Contract Clause 52.214-6 entitled "Explanation To Prospective Bidders," not later than 10 days prior to bid opening. Questions can be faxed to (651) 290-5706, attention to V. HADLEY. Questions received after the deadline may or may not be answered prior to bid submittal.
10. Funding for this contract is contingent upon the conditions stated in Section 00800, Clause No. 52.232-5002, Continuing Contracts.
11. The addresses, phone numbers, and Internet address (if available) for references cited in these specifications are listed in the Unified Facilities Guide Specification (UFGS) 01420 USACE SOURCES FOR REFERENCE PUBLICATIONS. UFGS 01420 is available on the TECHINFO page of the Corps of Engineers Huntsville District Internet site at: [www.hnd.usace.army.mil/techinfo](http://www.hnd.usace.army.mil/techinfo).
12. Any forthcoming amendments will only be available on this website: [www.mvp.usace.army.mil](http://www.mvp.usace.army.mil). E-mail notifications will be sent upon issuance of any amendments to all registered firms. Given that e-mail message notifications may not be reliable, it is recommended that each registered firm check this web site periodically for updates. A paper hard copy of each amendment will not be mailed unless specifically requested in writing.
13. Bid Bonds
  - a. It is the responsibility of the bidder to include an acceptable bid guarantee with their bid. This bid note does not provide bidders with an all-inclusive checklist for submitting an acceptable bid bond – rather, it provides some "lessons learned" information as to the unacceptability of photocopied bid bonds.
  - b. This solicitation requires bidders to submit a bid guarantee along with their bids (see clause 52.228-1). One acceptable form of bid guarantee is a bid bond. For a bid to be responsive, the bid bond accompanying the bid must unequivocally bind the bonding company – if it does not, the bid must be rejected as non-responsive. Please note that a non-responsive bid may not be corrected after bid opening to make it responsive – it must be rejected. The Contracting Officer has the authority and responsibility to determine whether the bid bond and its accompanying documentation clearly show that the person(s) executing the bid bond on behalf of the surety have the authority to unequivocally bind the bonding company. In order for a bid bond to be acceptable, it must be accompanied by a valid power-of-attorney issued by the surety (the bonding company, not the insurance agency writing the bond).

c. Photocopied or faxed powers-of-attorney are not acceptable. In order for a power-of-attorney accompanying a bid bond to be acceptable, it must be: (i) an original power-of-attorney (containing all original signatures) or (ii) a copy of a power-of-attorney accompanied by an original certification (original means original signature) by the secretary (or other authorized officer) of the surety stating that the copied power-of-attorney is still in full force and effect as of the date of the certification and has not been revoked. An original signature is one that (I) has been added at the time of the certification and (II) is manually affixed to the power of attorney (not computer generated). The presence of an original seal (a raised, crimped corporate seal or a paper or foil corporate seal that is manually attached) at the certification block of a power-of-attorney is not a substitute for an original signature.

14. For purposes of the clause entitled “52.219-4 -- Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999)”, the term “otherwise successful offer” means the lowest responsive bid from a responsible bidder prior to the application of any evaluation preference required by this clause.
15. The solicitation clause FAR 52.219-4 expressed that Small Disadvantaged Business (SDB) firms would receive both the HUBZone and SDB evaluation preference adjustments (See FAR clause 52.219-23). Guidance from the Office of the Under Secretary of Defense provides that DOD contracting activities, including the Department of the Army, shall suspend the use of price evaluation adjustments for SDB businesses in DOD Acquisitions, as prescribed in FAR subpart 19.11. Therefore the clause 52.219-23 is not contained in this solicitation and no SDB evaluation preference adjustment will be utilized.
16. **Effective 3 November 2003, the new EM385-1-1, USACE Safety and Health Requirements Manual, applies to all Corps of Engineers operations and all contracts. Contract clause 52.236-4006 is not changed but is emphasized that a new Safety and Health Requirements Manual is in place.**

## **SECTION 00100 - Bidding Schedule/Instructions to Bidders**

CLAUSES INCORPORATED BY FULL TEXT

### **52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (OCT 2003)**

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

## **52.209-4001 BIDDER'S QUALIFICATIONS (APR 1984) FAR 9.105-1**

Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

## **52.212-5000 EVALUATION OF SUBDIVIDED ITEMS (MAR 1995)--EFARS**

Item Nos. 0002, 0003, 0004, 0017, 0018 and 0019 are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its sub-items.

(End of provision)

## **52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)**

- (a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

## **52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)**

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

## **52.214-5 SUBMISSION OF BIDS (MAR 1997)**

- (a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic

means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

## **52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)**

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

## **52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)**

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

## **52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)**

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

## **52.214-19 CONTRACT AWARD--SEALED BIDDING-- CONSTRUCTION (AUG 1996)**

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

## **52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

## **52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

## **52.214-4001 INQUIRIES - BID INFORMATION**

(a) Inquiries:

Any questions regarding this solicitation should be directed to Vernon Hadley, Contract Specialist, at telephone number (651) 290-5418 (collect calls not accepted). It is requested that all technical questions on the plans and specifications be submitted to the Contract Specialist by facsimile transmission to (651) 290-5706.

The Planholder's List and bid results can be found on the St. Paul District web site at <http://www.mvp.usace.army.mil> (click on "Contracting/Bidders Info", then "Electronic Bid Solicitations").

(b) Bid Depository/Bid Opening Information:

Bids must be deposited prior to the date and time set for opening of bids. The bid depository is located in the Contracting Division, 6<sup>th</sup> Floor, of the St. Paul District, Corps of Engineers Centre, 190 Fifth Street East, St. Paul, Minnesota 55101-1638. A public bid opening will be held at the same location.

## **52.214-4002 ALL OR NONE QUALIFICATIONS (APR 1984) FAR 14.404-5**

A bidder/offeror must quote on all items in this solicitation to be eligible for award. The Government will award on a "All or None" basis. Evaluation of bids/offers will be based, among other factors, upon the total price quoted for all items.

## **52.216-1 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a FIRM FIXED PRICE contract resulting from this solicitation.

(End of clause)

## **52.217-5 EVALUATION OF OPTIONS (JUL 1990)**

(a) Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

## **52.225-10 NOTICE OF BUY AMERICAN ACT REQUIREMENT-- CONSTRUCTION MATERIALS (MAY 2002)**

(a) Definitions. Construction material, domestic construction material, and foreign construction material, as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

## **52.232-38 SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)**

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement

to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration.

- (1) The solicitation number (or other procurement identification number).
- (2) The offeror's name and remittance address, as stated in the offer.
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.
- (5) The offeror's account number and the type of account (checking, savings, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.
- (7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

## **52.233-2 SERVICE OF PROTEST (AUG 1996)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from : St. Paul District, USACE, ATTN: Cathy Vanatta, 190 5<sup>th</sup> St., St. Paul, Minnesota 55101-1638

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

## **52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)**

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: Paul Machajewski

431 North Shore Drive

Address: P.O. Box 397

Fountain City, WI 54629

Telephone: 608.687.3112

(End of provision)

## **52.236-4002 WORK PERFORMED BY THE CONTRACTOR**

The successful bidder must furnish the Contracting Officer within 10 days after the award, the items of work which he will perform with his own forces, the percentage of the total work this represents, and the estimated cost thereof. (See Section 00700, clause entitled "PERFORMANCE OF WORK BY THE CONTRACTOR.")

## **52.236-4005 UNAVAILABILITY OF UTILITY SERVICES**

The responsibility shall be upon the Contractor to provide and maintain at its expense, adequate utilities for its use for construction and domestic consumption, and to install and maintain necessary connections and lines for same, but only at such locations and in such manner as may be approved by the Contracting Officer. Before final acceptance, temporary connections and lines installed by the Contractor shall be removed in a manner satisfactory to the Contracting Officer.

## **52.247-6 FINANCIAL STATEMENT (APR 1984)**

The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The Government will use this information to determine the offeror's financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds.

(End of provision)

## **52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

[www.arnet.gov/far](http://www.arnet.gov/far)

(End of provision

## **252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION ALTERNATE A (NOV 2003)**

(a) Definitions. As used in this clause--

“Central Contractor Registration (CCR) database” means the primary Government repository for contractor information required for the conduct of business with the Government.

“Commercial and Government Entity (CAGE) code” means--

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11 of the Federal Acquisition Regulation) for the same parent concern.

“Registered in the CCR database” means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(2) The Contractor's CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields and has marked the records “Active.”

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the

contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

## **252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)**

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

## SECTION 00600 - Representations & Certifications

CLAUSES INCORPORATED BY FULL TEXT

### 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to --

(i) Those prices,

(ii) The intention to submit an offer, or

(iii) The methods of factors used to calculate the prices offered:

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of clause)

## **52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

## **52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative

agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(1) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

## **52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)**

### **(a) Definitions.**

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

### **(d) Taxpayer Identification Number (TIN).**

\_\_\_ TIN: \_\_\_\_\_

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

\_\_\_ Offeror is an agency or instrumentality of a foreign government;

\_\_\_ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

\_\_\_ Sole proprietorship;

\_\_\_ Partnership;

\_\_\_ Corporate entity (not tax-exempt);

\_\_\_ Corporate entity (tax-exempt);

\_\_\_ Government entity (Federal, State, or local);

\_\_\_ Foreign government;

\_\_\_ International organization per 26 CFR 1.6049-4;

\_\_\_ Other \_\_\_\_\_

(f) Common parent.

\_\_\_ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

\_\_\_ Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

(End of provision)

## **52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)**

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it ( ) is a women-owned business concern.

(End of provision)

## **52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)**

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that-

(i) The Offeror and/or any of its Principals -

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ( ) has not ( ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

## **52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (APR 2002)**

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 237990.

(2) The small business size standard is \$28.5 Million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents as part of its offer that it ( ) is, ( ) is not a small business concern.

(2) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, that it ( ) is, ( ) is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a women-owned small business concern.

(4) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a veteran-owned small business concern.

(5) (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a service-disabled veteran-owned small business concern.

(6) (Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It ( ) is, ( ) is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It ( ) is, ( ) is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. (The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:\_\_\_\_\_.) Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) Definitions. As used in this provision--

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern," means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern," means a small business concern --

(1) That is at least 51 percent owned by one or more women; in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

## **52.219-2      EQUAL LOW BIDS. (OCT 1995)**

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

---

(c) Failure to identify the labor surplus area as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

## **52.219-19      SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (OCT 2000)**

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.] The Offeror [ ] is, [ ] is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees    Avg. Annual Gross Revenues

\_\_\_\_ 50 or fewer    \_\_\_\_ \$1 million or less

\_\_\_\_ 51 - 100      \_\_\_\_ \$1,000,001 - \$2 million

\_\_\_\_ 101 - 250    \_\_\_\_ \$2,000,001 - \$3.5 million

\_\_\_\_ 251 - 500    \_\_\_\_ \$3,500,001 - \$5 million  
 \_\_\_\_ 501 - 750    \_\_\_\_ \$5,000,001 - \$10 million  
 \_\_\_\_ 751 - 1,000    \_\_\_\_ \$10,000,001 - \$17 million  
 \_\_\_\_ Over 1,000    \_\_\_\_ Over \$17 million

(End of provision)

## **52.222-22    PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)**

The offeror represents that --

(a) ( ) It has, ( ) has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) ( ) It has, ( ) has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

## **52.222-38    COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)**

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

## **52.223-13    CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

( ) (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

( ) (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);

( ) (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

( ) (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

( ) (v) The facility is not located within the United States or its outlying areas.

(End of clause)

## **252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

## **252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)**

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it:

\_\_\_\_ (1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_ (2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

## SECTION 00700 - Contract Clauses

CLAUSES INCORPORATED BY FULL TEXT

### 52.202-1 DEFINITIONS (DEC 2001)

(a) Agency head or head of the agency means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) Commercial component means any component that is a commercial item.

(c) Commercial item means--

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if--

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions.

This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(h) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

## **52.202-4001      DEFINITIONS (MAY 1995) EFARS Part 2.101**

"Chief of Contracting Office" means the Chief of the Contracting Division at a District, or the Director of Contracting at a Division, Center, Laboratory, or other support activity.

"Command" means each USACE Division, each USACE District, The U.S. Army Engineering and Support Center (HNC), Transatlantic Programs Center (TAC), Transatlantic Programs Center (Europe) (TAE), Topographic Engineer Center (TEC), Cold Regions Research and Engineering Laboratory (CRREL), Construction Engineering Research Laboratory (CERL), Humphreys Engineering Center Support Activity (HECSA), and Waterways experiment Station (WES).

"Commander" means the commanding officer of each USACE district and each USACE division, and the director or commander of HNC, TAC, TAE, ETL, CRREL, CERL, HECSA and WES.

"Head of Contracting Activity (HCA)" for USACE means the Chief of Engineers.

Centers. For determining contracting authority levels for this regulation, Centers (HNC, and TAC) will equate to a Division. As a subordinate unit to TAC, TAE's contracting authority will therefore equate to that of a district.

Level higher than the contracting officer. When a District or TAE chief of contracting is the contracting officer, a "level higher than the contracting officer" means the Division or Center Director of Contracting. When an operating Division, Center or Laboratory Director/Chief of Contracting is the contracting officer a "level higher than the contracting officer" means the PARC.

Local Cooperation Agreements (LCAs). See Project Cooperation Agreements.

Project Cooperation Agreements. Formerly referred to as Local Cooperation Agreements, these are agreements under 31 U.S.C. 6305 and 42 U.S.C. 1962d-5b. They are not contracts as defined by the FAR.

"USACE and HQUSACE" means the United States Army Corps of Engineers and its headquarters, respectively.

## **52.203-3 GRATUITIES (APR 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

## **52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

## **52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

## **52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)**

### **(a) Definitions.**

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made

to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

## **52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

## **52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

## **52.203-12     LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2003)**

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State, as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

## **52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**

(a) Definitions. As used in this clause--

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as--

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard

should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

## **52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

## **52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)**

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 30 June 2006.

The time stated for completion shall include final cleanup of the premises.

The completion dates are based on the assumption that the successful offeror will receive the notice to proceed by 11 August, 2004. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

(End of clause)

## **52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)**

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$680.00/day for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

## **52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

## **52.214-3 AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)**

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

## **52.214-4 FALSE STATEMENTS IN BIDS (APR 1984)**

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

## **52.214-5 SUBMISSION OF BIDS (MAR 1997)**

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

## **52.214-6 EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)**

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

## **52.214-7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)**

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

## **52.214-18 PREPARATION OF BIDS--CONSTRUCTION (APR 1984)**

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including--

- (1) Lump sum bidding;
  - (2) Alternate prices;
  - (3) Units of construction; or
  - (4) Any combination of subparagraphs (1) through (3) above.
- (c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.
- (d) Alternate bids will not be considered unless this solicitation authorizes their submission.
- (End of provision)

## **52.214-19 CONTRACT AWARD--SEALED BIDDING-- CONSTRUCTION (AUG 1996)**

- (a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.
- (b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.
- (c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.
- (d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.
- (End of provision)

## **52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)**

- (a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because

(1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:

(1) the actual subcontract; or

(2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made:

(1) the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) Except as prohibited by subdivision (d)(2)(ii) of this clause:

(i) an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if:

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if:

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

## **52.214-28 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 1997)**

(a) The requirements of paragraphs (b) and (c) of this clause shall:

(1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.403-4(a)(1); and

(2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1(b) applies.

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.406-2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403-4(a)(1).

(End of clause)

## 52.217-4000 OPTION FOR ADDITIONAL WORK (Construction) (AUG 2000)

The Government may require the Contractor to perform the work identified as Option 1 (CLIN(s) 0016 - 0024) at the price stated in the Schedule. Option 1 will only be exercised on an "all or none" basis. The Contracting Officer may exercise the option by written notice to the Contractor at any time before 30 October 2004. The Contracting Officer shall provide the Contractor notice of the Government's intent to exercise the option at least 30 calendar days in advance of exercising the option. Notice of intent to exercise the option shall not constitute an exercise of the option and shall not bind the government to exercise the option. **If the Government should exercise the option before 30 October, 2004, the Contractor's required completion date will be 30 September 2005.**

Exercise of the option shall be evidenced on Standard Form 30, citing this Section as the authority for exercising the option. Notice of intent to exercise the option shall be considered to have been given at the earlier of the occurrence of any of the following events: deposit of written notification in the mail, receipt by the Contractor of a facsimile notifying it of the Government's intent to exercise the option, or receipt by the Contractor of an e-mail notifying the Contractor of the Government's intent to exercise the option. The option shall be considered to have been exercised at the time the Government deposits written notification to the Contractor in the mail or, if earlier, at the time written notice is delivered to the Contractor.

## 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)

(a) Definition. HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) Evaluation preference. (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except-

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer.

These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) Waiver of evaluation preference. A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

\_\_\_ Offeror elects to waive the evaluation preference.

(d) Agreement. A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

## **52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

Definitions. As used in this contract--

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

## **52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002)--ALTERNATE I (OCT 2001).**

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business,

HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to HUBZone small business concerns;

(v) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vi) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) HUBZone small business concerns;

(iv) Small disadvantaged business concerns; and

(v) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) HUBZone small business concerns;
- (iv) Small disadvantaged business concerns; and
- (v) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will--

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated)

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether HUBZone small business concerns were solicited and, if not, why not;
- (D) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (E) Whether women-owned small business concerns were solicited and, if not, why not; and
- (F) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through--

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- (1) Assist small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
- (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owner small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owner small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) the master plan has been approved, (2) the offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

## **52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)**

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

## **52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

## **52.222-3 CONVICT LABOR (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

(1) On parole or probation to work at paid employment during the term of their sentence;

- (2) Who have been pardoned or who have served their terms; or
- (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--
  - (i) The worker is paid or is in an approved work training program on a voluntary basis;
  - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
  - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
  - (v) The Attorney General of the United States has certified that the work-release laws or **regulations** of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

## **52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (SEP 2000)**

- (a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) Payrolls and basic records.
  - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and

actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

## **52.222-6 DAVIS-BACON ACT (FEB 1995)**

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage

rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(2) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis -Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

## **52.222-7 WITHHOLDING OF FUNDS (FEB 1988)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis -Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

## **52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)**

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for

inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

## **52.222-9 APPRENTICES AND TRAINEES (FEB 1988)**

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on

the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

## **52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

## **52.222-11 SUBCONTRACTS (LABOR STANDARDS (FEB 1988))**

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis -Bacon Act, Contract Work Hours and Safety Standards Act-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination-Debarment, Disputes Concerning Labor Standards, Compliance with Davis -Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(c) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

## **52.222-12 CONTRACT TERMINATION--DEBARMENT (FEB 1988)**

A breach of the contract clauses entitled Davis -Bacon Act, Contract Work Hours and Safety Standards Act-- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis -Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

## **52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis -Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

## **52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

## **52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)**

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis -Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

## **52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

## **52.222-23 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)**

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
.6%	6.9%

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract

Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Wisconsin, Buffalo County, Buffalo City.

(End of provision)

## **52.222-26 EQUAL OPPORTUNITY (APR 2002)**

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated

during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

## **52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**

(a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a

year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
  - (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
  - (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  - (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
  - (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
  - (m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
  - (n) The Contractor shall designate a responsible official to--
    - (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
    - (2) Submit reports as may be required by the Government; and
    - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

## **52.222-30 DAVIS-BACON ACT--PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001)**

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of-- (1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

## **52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**

(a) Definitions. As used in this clause--

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee--

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and

closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means--

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General. (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings. (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

## **52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1)

of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

## **52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)**

(a) Definitions. As used in this clause--

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

“Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.”

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.

(End of clause)

## **52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

(a) Definitions. As used in this clause --

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall-- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

## **52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

## **52.225-9 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (JUN 2003)**

(a) Definitions. As used in this clause--

Component means an article, material, or supply incorporated directly into a construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic construction material means--

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: None.

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) \1\
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Item 1

Foreign construction material....  
Domestic construction material...  
Item 2  
Foreign construction material....  
Domestic construction material...

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Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of clause)

## **52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2003)**

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States and its outlying areas under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

## **52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)**

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian

ownership constitute a not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

## **52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

(End of clause)

## **52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)**

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(4) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at (FAR) 2.101.to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause)

## **52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS (APR 1984)**

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

## **52.228-1 BID GUARANTEE (SEP 1996)**

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.-

(c) The amount of the bid guarantee shall be 20 percent of the bid price or \$3 million, whichever is less.-

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.-

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of clause)

## **52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)**

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government.

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

## **52.228-11 PLEDGES OF ASSETS (FEB 1992)**

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

## **52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)**

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of less than \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of less than \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

-----  
[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date \_\_\_\_\_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_(for reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$\_\_\_\_\_. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_\_  
[Confirming Financial Institution's Letterhead or Name and Address]

(Date) \_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: \_\_\_\_\_ [U.S. Government agency]

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ [name of issuing financial institution] for drawings of up to United States dollars \_\_\_\_\_/U.S. \$\_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

\_\_\_\_\_

[City, State]

(Date) \_\_\_\_\_

[Name and address of financial institution]

Pay to the order of \_\_\_\_\_ [Beneficiary Agency] \_\_\_\_\_ the sum of United States  
\$ \_\_\_\_\_. This draft is drawn under Irrevocable Letter of Credit No.

\_\_\_\_\_.

\_\_\_\_\_

[Beneficiary Agency]

By: \_\_\_\_\_

(End of clause)

## **52.228-15 PERFORMANCE AND PAYMENT BONDS-- CONSTRUCTION (JUL 2000)-**

(a) Definitions. As used in this clause--

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular

570 is published in the Federal Register or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

## **52.228-4022 REQUIREMENT FOR BID GUARANTEE (FAR 28.101-2)**

Each bidder shall submit with its bid a Bid Bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government or other security as provided in the clause BID GUARANTEE in the form of twenty percent (20%) of the bid price or \$3,000,000 whichever is lesser. The bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents.

## **52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)**

(a) As used in this clause--

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
  - (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
  - (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
  - (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
  - (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.
- (End of clause)

## **52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEP 2002)**

- (a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.
- (b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.
- (1) The Contractor's request for progress payments shall include the following substantiation:
  - (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
  - (ii) A listing of the amount included for work performed by each subcontractor under the contract.
  - (iii) A listing of the total amount of each subcontract under the contract.
  - (iv) A listing of the amounts previously paid to each such subcontractor under the contract.
  - (v) Additional supporting data in a form and detail required by the Contracting Officer.
- (2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--
  - (i) Consideration is specifically authorized by this contract; and
  - (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

-----

(Name)

-----

(Title)

-----

(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract,

for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

## **52.232-17 INTEREST (JUNE 1996)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under

this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

## **52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

## **52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (FEB 2002)**

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to use:

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of clause)

## **52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER— CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal

Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

## **52.232-35 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (MAY 1999)**

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name:

US Army Corps of Engineers  
St. Paul District  
190 E, 5<sup>th</sup> St.  
St. Paul, MN 55101

Telephone Number:

651-290-5233

Person to Contact:

Mr. Wayne Sheffel, CEMVP-RM-F

Electronic Address: wayne.sheffel@usace.army.mil

(End of clause)

## **52.233-1 DISPUTES. (JUL 2002)**

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

## **52.233-3 PROTEST AFTER AWARD (AUG. 1996)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

## **52.236-1 PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)**

The Contractor shall perform on the site, and with its own organization, work equivalent to at least 15 percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

## **52.236-2 DIFFERING SITE CONDITIONS (APR 1984)**

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting

Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

## **52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

## **52.236-4 PHYSICAL DATA (APR 1984)**

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

- (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by surveys.
- (b) Weather conditions: Before submitting bids, the bidders shall satisfy themselves as to hazards that arise from weather conditions. Complete weather records and reports may be obtained from the local U.S. Weather Service.
- (c) Transportation facilities. N/A

(d) River Conditions. Hydrographs of the Mississippi River are included in the contract drawings. The Contractor shall schedule operations as necessary to take advantage of the most favorable river stages.

(End of clause)

## **52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)**

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

## **52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

## **52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)**

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

## **52.236-8 OTHER CONTRACTS (APR 1984)**

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

## **52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)**

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and

shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

## **52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)**

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

## **52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)**

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

## **52.236-12 CLEANING UP (APR 1984)**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)

## **52.236-13 ACCIDENT PREVENTION (NOV 1991) – ALTERNATE I (NOV 1991)**

(a) The Contractor shall provide and maintain work environments and procedures which will

(1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) avoid interruptions of Government operations and delays in project completion dates; and

(3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(d) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(i) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any

condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) Before commencing the work, the Contractor shall-

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(End of clause)

## **52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)**

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

## **52.236-16 QUANTITY SURVEYS (APR 1984) - ALTERNATE I (APR 1984)**

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The

Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

## **52.236-17 LAYOUT OF WORK (APR 1984)**

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

## **52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)**

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or

shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

## **52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

## **52.242-14 SUSPENSION OF WORK (APR 1984)**

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

## **52.243-4 CHANGES (AUG 1987)**

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

- (1) the date, circumstances, and source of the order and
- (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

## **52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2003)**

(a) Definitions.

"Commercial item", has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

## **52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (JUN 2003)**

(a) Government-furnished property.

(1) Overseas contracts. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property.

After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration. (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

## **52.245-19 GOVERNMENT PROPERTY FURNISHED "AS IS" (APR 1984)**

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available on an "as is" basis. Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the Government Property clause of this contract.

(End of clause)

## **52.245-4002 GOVERNMENT-FURNISHED PROPERTY IDENTIFICATION AND LOCATION**

- (ii) The Government will furnish to the Contractor the property listed below to be incorporated or installed into the work or used in performing the contract. The Contractor shall arrange for pickup of the Government furnished Wildlife Loafing Structures (Trees), currently stored at Trempealeau National Wildlife Refuge, Trempealeau, WI. The Contractor shall coordinate with the Contracting Officer's Representative for the exact location of the storage site and arrange pickup.

The Contractor shall be responsible for pickup and delivery of the project site including, but not limited to loading, transporting, and unloading the materials. When the property is picked up, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this contract.

- b) The following is a list of Government-Furnished Property:

Quantity	Item	Description
44	Wildlife Loafing Structures	The Government Furnished Trees are approximately 50' (long).

3,000 Cubic Yards of 12" Rock, located on L/D 5 dike, as shown on the drawings.

(1) Quantities indicated for the above-listed items which are marked with an asterisk are estimated. It is the intention of the Government to furnish all of these items required to complete the work as specified and the various quantities will be adjusted when necessary.

(2) Quantities stated for the above items which are not marked with an asterisk are all that will be furnished by the Government. These quantities are not to be considered as indications or warranties that the amounts stated will either be sufficient or insufficient. The Contractor will be required to furnish any additional quantities required.

## **52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)**

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.
- (d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of clause)

## **52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)**

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

## **52.247-34 F.O.B. DESTINATION (NOV 1991)**

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

## **52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000)**

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for

(i) the affected portions of the existing contract requirement and

(ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by

(i) 45 percent for fixed-price contracts or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The

Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering-- Construction clause of contract . . . . ., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

## **52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

## **52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)**

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(i) acts of God or of the public enemy,

(ii) acts of the Government in either its sovereign or contractual capacity,

(iii) acts of another Contractor in the performance of a contract with the Government,

(iv) fires,

(v) floods,

(vi) epidemics,

(vii) quarantine restrictions,

(viii) strikes,

(ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

## **52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[www.arnet.gov/far](http://www.arnet.gov/far)

(End of clause)

## **52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(e) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

## **252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)**

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

## **252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)**

(a) Definitions. As used in this clause—

(1) "Arising out of a contract with the DoD" means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

- (2) On the board of directors of any DoD contractor or first-tier subcontractor;
  - (3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or
  - (4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.
- (c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.
- (d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—
- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
  - (2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.
- (e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—
- (1) Suspension or debarment;
  - (2) Cancellation of the contract at no cost to the Government; or
  - (3) Termination of the contract for default.
- (f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—
- (1) The person involved;
  - (2) The nature of the conviction and resultant sentence or punishment imposed;
  - (3) The reasons for the requested waiver; and
  - (4) An explanation of why a waiver is in the interest of national security.
- (g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.
- (h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.
- (End of clause)

## **252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)**

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

## **252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)**

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

## **252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)**

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

(End of clause)

## **252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

## **252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

## **252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)**

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security; health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing--

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2..1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent that are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

## **252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS**

**MATERIALS (APR 1993)**

(a) "Definitions".

As used in this clause --

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

## **252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (MAY 2004)**

(a) Definitions. As used in this clause--

(1) Component means any item supplied to the Government as part of an end product or of another component.

(2) End product means supplies delivered under a line item of this contract.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply--

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool--

(i) Is not more than 10 percent of the total price of the end product; and (ii) Does not exceed the simplified acquisition threshold in FAR part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced, except that this clause

does apply to fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States;

(5) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if--

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include--

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

## **252.225-7014 PREFERENCE FOR DOMESTIC SPECIALTY METALS (APR 2003)**

(a) Definitions. As used in this clause--

(1) Qualifying country means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(2) Specialty metals means--

(i) Steel--

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to specialty metals --

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

## **252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (APR 2003)**

(a) Definitions. As used in this provision--

(1) Foreign person means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) United States person is defined in 50 U.S.C. App. 2415(2) and means--

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) Certification. If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

## **252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)**

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of

materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

## **252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)**

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

## **252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)**

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

## **252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000)**

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

- (1) Check all drawings furnished immediately upon receipt;
- (2) Compare all drawings and verify the figures before laying out the work;
- (3) Promptly notify the Contracting Officer of any discrepancies;
- (4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and
- (5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

- (1) Large-scale drawings shall govern small-scale drawings; and
  - (2) The Contractor shall follow figures marked on drawings in preference to scale measurements.
- (d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
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**Sheet Reference Number G-002.**

(End of clause)

## **252.236-7002 OBSTRUCTION OF NAVIGABLE WATERWAYS. (DEC 1991)**

(a) The Contractor shall --

- (1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;
- (2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and
- (3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may --

- (1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and
  - (2) Deduct the cost of removal from any monies due or to become due to the Contractor; or
  - (3) Recover the cost of removal under the Contractor's bond.
- (c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et. seq.).

## **252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)**

- (a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.
- (1) Sixty (60) percent of the lump sum price upon completion of the contractor's mobilization at the work site.
  - (2) The remaining forty (40) percent upon completion of demobilization.
- (b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.
- (1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of --
- (i) Actual mobilization costs at completion of mobilization;
  - (ii) Actual demobilization costs at completion of demobilization; and
  - (iii) The remainder of this item in the final payment under this contract.
- (2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

## **252.236-7008 CONTRACT PRICES - BIDDING SCHEDULES. (DEC 1991)**

- (a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for --
- (1) Furnishing all plant, labor, equipment, appliances, and materials; and
  - (2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

## **252.242-7000 POSTAWARD CONFERENCE (DEC 1991)**

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

## **252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)**

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

## **252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)**

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

-----  
(Official's Name)

-----  
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

## **252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD) (MAR 2000)**

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244-6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

(End of clause)

## **252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2003)**

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA) electronic form (see paragraph (b)(1) of the clause at 252.232-7003) fulfills the requirement for a material inspection and receiving report (DD Form 250).

(End of clause)

## **252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)**

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

## SECTION 00800 - Special Contract Requirements

CLAUSES INCORPORATED BY FULL TEXT

### 52.000-4004 PARTNERING

The Government proposes to form a partnering relationship with the contractor. This partnering relationship will strive to facilitate communication and draw on the strengths of each organization in an effort to achieve a quality project, within budget, and on schedule. Participation will be totally voluntary. Partnering will not alter or supersede any provision of this contract nor will it provide either party with any additional contractual rights or obligations. Participation in partnering will not affect award of this contract. Any cost associated with this partnering will be agreed to by both parties and will be shared equally, with no change in contract price.

### 52.212-4003 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER (OCT 1989) ER 415-1-15

a. This provision specifies the procedure for the determination of time extensions for unusually severe weather in accordance with the CONTRACT CLAUSES: DEFAULT (FIXED-PRICE CONSTRUCTION). In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

1) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

2) The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

b. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities. The weather stations selected for this analysis were Winona Dam 5A (precipitation), which has a period of record of 55-years (1948 – 2002), and Theilman 1 SSW (temperature) which has a period of record of 41 years (1962 – 2002). Data shown is for precipitation of 0.1 inch or more and maximum daily temperatures less than 32 degrees Fahrenheit. The actual numbers have been multiplied by 5/7 to account for the workweek.

#### MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORKDAYS BASED ON (5) DAY WORKWEEK.

GEOGRAPHIC LOCATION – Buffalo City, WI

Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Days	15	10	6	5	5	5	4	5	4	3	5	13

c. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph b, above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the CONTRACT CLAUSES: DEFAULT (FIXED-PRICE CONSTRUCTION).

## **52.212-5000 EVALUATION OF SUBDIVIDED ITEMS (MAR 1995)--EFARS**

Item Nos. 0002, 0003, 0004, 0017, 0018, 0019 are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its sub-items.

(End of provision)

## **52.212-5001 VARIATIONS IN ESTIMATED QUANTITIES, SUBDIVIDED ITEMS**

(MAR 1995) --EFARS

This variation in estimated quantities clause is applicable only to Items Nos. 0002, 0003, 0004, 0017, 0018 and 0019.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for Items Nos. 0002, 0003, 0004, 0017, 0018 and 0019 is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under Items Nos. 0002, 0003, 0004, 0017, 0018 and 0019 exceeds 115% or is less than 85% of the total estimated quantity of the sub-items under that item and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under Items Nos. 0002, 0003, 0004, 0017, 0018 and 0019 exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

## **52.214-5000      ARITHMETIC DISCREPANCIES – EFARS**

(a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of bidding schedule as submitted by the bidder:

- (1) Obviously misplaced decimal points will be corrected;
- (c) Discrepancy between unit price and extended price, the unit price will govern;
- (d) Apparent errors in extension of unit prices will be corrected;
- (e) Apparent errors in addition of lump sum and extended prices will be corrected.

(b) For the purpose of bid evaluation, the government will proceed on the assumption that the bidder intends his bid to be evaluated on basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

(c) These correction procedures shall not be used to resolve any ambiguity concerning which bid is low.

(End of statement)

## **52.228-4002      INSURANCE**

As referenced in Contract Clause: INSURANCE--WORK ON A GOVERNMENT INSTALLATION, the following types and amounts of insurance are required under this contract.

Type	Amount
Worker's Compensation and Employer's Liability Insurance:	
Coverage A Worker's Compensation	Compliance with State of Wisconsin Worker's Compensation Law
Coverage B Employer's Liability	\$ 100,000
General Liability Insurance:	
Bodily Injury	\$1,000,000 per occurrence
Property Damage	Not Required
Automobile Liability Insurance (Comprehensive Policy Form):	
Bodily Injury	\$ 500,000 per person and \$1,000,000 per occurrence
Property Damage	\$ 100,000 per occurrence

## **52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE**

MAR 1995)—EFARS

- (a) This clause does not apply to terminations. See 52.249-5000, Basis for Settlement of Proposals and FAR Part 49.
- (b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region IV. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retroactive pricing, the schedule in effect at the time the work was performed shall apply.
- (c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.
- (d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

(End of clause)

## **52.232-4004 INVOICE PROCEDURES**

In accordance with CONTRACT CLAUSE titled "PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS", the contractor shall submit invoices as follows:

- a. In order to qualify for a periodic payment, the Contractor must submit a proper invoice (request for payment) to the Contracting Officer's Representative (COR) and a determination must be made that supplies or services conform to the contract requirements. This determination will be made for the sole purpose of processing progress payments and will not constitute formal acceptance. The due date for making progress payments shall be as stated in the contract clause: PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS.
- b. The submitted request for payment must be accompanied with documentation adequate to substantiate the amount requested. Substantiation shall be consistent with the clauses in the solicitation titled Quantity Surveys, Purchase Orders, Invoices, etc. satisfactory to the COR.

c. The Contractor must also include with the payment request a certification as described in the Clause "PAYMENT UNDER FIXED-PRICE CONSTRUCTION CONTRACTS".

d. Payment requests will be reviewed for propriety by the COR. Defective invoices will be returned to the Contractor for resolution with defects identified. Along with the returned invoice, the COR may include, at its option, an ENG FORM 93-PAYMENT ESTIMATE reflecting the substantiated and uncontested payment amount. The Contractor will then be given the option of signing and returning the FORM 93 for payment along with the original invoice and certification or resubmitting a revised invoice and certification. To expedite payment, the Contractor may request in writing that the COR retain the defective invoice and immediately process the payment request at the amount determined to be acceptable to the Government.

## **52.232-5002 CONTINUING CONTRACTS (ALTERNATE) (MAR 1995)--EFARS**

(a) Funds are not available at the inception of this contract to cover the entire contract price. The sum of \$350,000.00 has been reserved for this contract and is available for payment to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds, together with funds provided by one or more non-federal project sponsors will be reserved for this contract. The liability of the United States for payments beyond the funds reserved for this contract is contingent on the reservation of additional funds.

(b) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (e) and (h) below.

(c) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

(d) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under this contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

(e) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. If and when sufficient additional funds are reserved, the contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of this contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

(f) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under a "Suspension of Work" or similar clause or in any other manner under this contract.

(g) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(h) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments other wise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be at no cost to the Government, except that, to the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of the Government.

(i) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under this contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess .

(j) The term "Reservation" means monies that have been set aside and made available for payments under this contract.

(End of clause)

## **52.236-4006 SAFETY AND HEALTH REQUIREMENTS MANUAL INTERIM CHANGES, EM 385-1-1 (APR 2001)**

This paragraph applies to contracts and purchase orders that require the contractor to comply with EM 385-1-1 (e.g., contracts that include the Accident Prevention clause at FAR 52.236-13 and/or other safety provisions). EM 385-1-1 and its changes are available at <http://www.hq.usace.army.mil> (at the HQ homepage, select Safety and Occupational Health). The Contractor shall be responsible for complying with the current edition and all changes posted on the web as of the effective date of this solicitation.

## **52.236-4012 MATERIAL SOURCES**

a. Concrete aggregate and stone protection materials meeting the requirements of these specifications can be produced from the sources listed in Section 00830 "Attachments":

b. Materials may be furnished from any of the listed sources or at the option of the Contractor may be furnished from any other sources designated by the Contractor and approved by the Contracting Officer, subject to the conditions hereinafter stated .

c. After the award of the contract, the Contractor shall designate in writing only one source for each type of material or one combination of sources from which he proposes to furnish the materials. If the Contractor proposes to furnish materials from a source or from sources not listed, he may designate only a single source for each type of material or single combination of sources for materials. Samples for acceptance testing shall be provided as required by the TECHNICAL PROVISIONS. If a source for materials so designated by the Contractor is not approved for use by the Contracting Officer, the Contractor may not submit for approval other sources but shall furnish the materials from approved sources selected from the list at no additional cost to the Government.

d. Approval of a source of materials is not to be construed as approval of all material from that source. The right is reserved to reject materials from certain localized areas, zones, strata, or channels, when such materials are unsuitable

as determined by the Contracting Officer. Materials produced from an approved source shall meet all the requirements of the TECHNICAL PROVISIONS of these specifications.

## **52.236-4014 PURCHASE ORDERS**

Two legible copies of each purchase order issued by the Contractor or the Contractor's subcontractors for materials and equipment to be incorporated into the project, shall be furnished the Contracting Officer as soon as issued. Each purchase order shall (1) be clearly identified with applicable Department of Army contract number, (2) carry and identifying number, (3) be in sufficient detail to identify the material being purchased, and (4) indicate a definite delivery date. At the option of the Contractor, the copies of the purchase orders may or may not indicate the price of the articles purchased.

## **52.236-4025 FLOATING PLANT EQUIPMENT (MAY 1999)**

When mechanized equipment is operated on floating plant, the contractor shall provide positive and acceptable means of preventing this equipment from moving or falling into the water. The type of equipment addressed by this clause includes front-end loaders, bulldozers, trucks (both on and off-road), backhoes, trackhoes, and similar equipment. If the Contractor plans to use such equipment on floating plant, an activity hazard analysis must be developed for this feature of work. The plan must include a detailed explanation of the type or types of physical barriers, curbs, structures, etc., which will be incorporated to protect the operator and prevent the equipment from entering the water. Nonstructural warning devices may be considered for situations where the use of structural barriers is determined to be impracticable. The activity hazard analysis must thoroughly address the procedure and be submitted to the Corps of engineers for review and acceptance prior to start of this feature of work.

## **52.236-4063 RADIO**

The Contractor shall maintain a staff that is knowledgeable about radio communications to advise oncoming navigation of appropriate passing directions while the Contractor's floating plant is in the navigation channel. In particular, the Contractor shall monitor Marine Band Channel 13 for commercial navigation and Channel 16 for emergency communication.

## **52.239-4001 YEAR 2000 COMPLIANCE (FAR 39.106) (JUL 1998)**

The contractor shall ensure that, with respect to any design, construction, goods, or services under this contract as well as any subsequent task/delivery orders issued under this contract (if applicable), all information technology contained therein shall be Year 2000 compliant. Specifically, the contractor shall perform, maintain, and provide an

inventory of all major components to include structures, equipment, items, parts, and furnishings under this contract and each task/delivery order which may be affected by the Year 2000 compliance requirement.

## **52.242-14 SUSPENSION OF WORK (APR 1984)**

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

## **52.246-4001 LABORATORY AND TESTING FACILITIES**

The Contractor shall provide and maintain all measuring and testing devices, laboratory equipment, instruments, transportation, and supplies necessary to accomplish the required testing. All measuring and testing devices shall be calibrated at established intervals against certified standards. The Contractor's measuring and testing equipment shall be made available for use by the Government for verification of their accuracy and condition as well as for any inspection or test desired pursuant to SECTION 00700: INSPECTION OF CONSTRUCTION. The location of the laboratory shall be convenient to the site such that test results are available prior to proceeding with the next sequential phase of the work.

## **52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS**

“Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

- (1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.
- (2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.
- (3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.
- (4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).
- (5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.”

(End of Clause)

SPRING LAKE ISLANDS

SECTION 00830

ATTACHMENTS

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
A	WAGE RATES	00830-A-1
B	MATERIAL SOURCES	00830-B-1
C	USFWS SPECIAL USE PERMIT	00830-C-1
D	LOCATION OF WILDLIFE LOAFING STRUCTURE TREE TRUNKS	00830-D-1

APPLICABLE WAGE DECISION

The terms 'dredging' and 'dredging equipment' are defined for the purpose of providing the Contractor with guidance as to which Davis-Bacon Act wage determination applies to various portions of the project work. The Davis-Bacon Wage Decision entitled IL030019 Dredging shall apply to all 'dredging' as that term is defined below. The Davis-Bacon Wage Decision entitled WI030019 Heavy shall apply to all contract work that is not 'dredging' as that term is defined below. Wage Decisions IL030019 and WI030019 are both incorporated into this solicitation.

Definitions

A. 'Dredging' is defined as the excavation of material from the confines of a waterbody and its transportation to a designated disposal site by the use of 'dredging equipment'.

B. Hydraulic 'dredging equipment' consists of the dredge, its attendant plant and the pipeline (including booster pumps, both floating and land based) used to excavate material and transport the dredged slurry to the disposal site or sites.

C. Mechanical 'dredging equipment' consists of a clamshell, dragline, backhoe, bucket ladder or other mechanical excavation equipment on a barge or other suitable floating plant and the barges and tenders used to transport the dredged spoil to shore.

D. Dredging equipment does not include land based equipment used for attending disposal areas or off-loading barges at the disposal site.



SPRING LAKE ISLANDS

SECTION 00830 - ATTACHMENTS

ATTACHMENT NO. A

WAGE RATES

<b><u>General Decision No.</u></b>	<b><u>Construction Type</u></b>	<b><u>Page Nos.</u></b>
IL030019	Dredging	IL030019-1
	through	IL030019-3
WI030019	Heavy	WI030019-1
	through	WI030019-20



## General Decision Number: IL030019 04/02/2004

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General Decision Number: **IL030019** 04/02/2004

Superseded General Decision Number: IL020019

State: Illinois

Construction Types: Heavy Dredging

Counties: Illinois Statewide.

Dredging Construction Projects: Dredging the following rivers and their tributaries, the Kasakaski River from the mouth to Fayetteville, Illinois; Illinois River; Minnesota River; Mississippi River and the Ohio River.

Modification Number	Publication Date
0	06/13/2003
1	01/16/2004
2	03/12/2004
3	04/02/2004

\* SUIL2003-002 01/01/2004

	Rates	Fringes
Dredging: (Levermen, Engineer, Mechanic and Boatman)		
AREA 1: Within the geographical jurisdiction of the St. Louis District, Corps of Engineers.....\$ 24.41		9.82
AREA 2: Within the geographical jurisdiction of the Louisville District, Corps of Engineers.....\$ 24.30		9.82
AREA 3: Within the geographical jurisdiction of the Huntington District, Corps of Engineers:.....\$ 24.30		9.82
AREA 4: Within the geographical jurisdiction of the St. Paul, Rock Island, and Chicago Districts, Corps of Engineers:.....\$ 23.40		13.50
Levermen, Operators on Backhoes over 130,000 lbs. Operators on Cranes over 165 tons and Operators that are required to have a license or certification to do the work assigned them.....\$ 24.57		13.50
Dredging: (Oiler)		
AREA 1: Within the geographical jurisdiction of the St. Louis District, Corps of Engineers.....\$ 21.70		9.82
AREA 2: Within the geographical		

jurisdiction of the Louisville District, Corps of Engineers.....\$ 20.11	9.82
AREA 3: Within the geographical jurisdiction of the Huntington District, Corps of Engineers.....\$ 20.11	9.82
AREA 4: Within the geographical jurisdiction of the St. Paul, Rock Island and Chicago Districts, Corps of Engineers.....\$ 19.35	13.50

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates  
listed under the identifier do not reflect collectively  
bargained wage and fringe benefit rates. Other designations  
indicate unions whose rates have been determined to be  
prevailing.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can  
be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on  
a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests  
for summaries of surveys, should be with the Wage and Hour  
Regional Office for the area in which the survey was conducted  
because those Regional Offices have responsibility for the  
Davis-Bacon survey program. If the response from this initial  
contact is not satisfactory, then the process described in 2.)  
and 3.) should be followed.

With regard to any other matter not yet ripe for the formal  
process described here, initial contact should be with the  
Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an  
interested party (those affected by the action) can request  
review and reconsideration from the Wage and Hour Administrator  
(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the  
interested party's position and by any information (wage  
payment data, project description, area practice material,  
etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an  
interested party may appeal directly to the Administrative

Review Board (formerly the Wage Appeals Board). Write to:  
Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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## General Decision Number: WI030019 04/16/2004

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General Decision Number: **WI030019** 04/16/2004

Superseded General Decision Number: WI020019

State: Wisconsin

Construction Types: Heavy

Counties: Wisconsin Statewide.

HEAVY CONSTRUCTION PROJECTS (Excluding Tunnel, Sewer, and Water Lines), AND HOPPER DREDGE PROJECTS

Modification Number      Publication Date

0                      06/13/2003

1                      03/12/2004

2                      04/16/2004

BOIL0107-001 07/01/2003

	Rates	Fringes
Boilermaker		
Boilermaker.....	\$ 27.25	12.25
Small Boiler Repair		
(under 25,000 lbs/hr).....	\$ 21.80	8.35

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BRWI0001-002 06/01/2002

CRAWFORD, JACKSON, JUNEAU, LA CROSSE, MONROE, TREMPLEAU, AND VERNON COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 24.13	9.35

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BRWI0002-002 06/01/2002

ASHLAND, BAYFIELD, DOUGLAS, AND IRON COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 27.19	9.10

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BRWI0003-002 06/01/2002

BROWN, DOOR, FLORENCE, KEWAUNEE, MARINETTE, AND OCONTO COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 24.18	9.30

---

BRWI0004-002 06/01/2002

KENOSHA, RACINE, AND WALWORTH COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 27.38	9.81

---

BRWI0006-002 06/01/2002

ADAMS, CLARK, FOREST, LANGLADE, LINCOLN, MARATHON, MENOMINEE, ONEIDA, PORTAGE, PRICE, TAYLOR, VILAS AND WOOD COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 24.18	9.30

---

BRWI0007-002 06/01/2002

GREEN, LAFAYETTE, AND ROCK COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 25.47	9.70

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BRWI0008-002 06/01/2002

MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES

	Rates	Fringes
Bricklayer.....	\$ 28.33	8.75

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BRWI0009-001 06/01/2002

GREEN LAKE, MARQUETTE, OUTAGAMIE, SHAWANO, WAUPACA, WASHARA, AND WINNEBAGO COUNTIES

	Rates	Fringes
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Bricklayer.....	\$ 24.18	9.30
-----		
BRWI0011-002 06/01/2002		
CALUMET, FOND DU LAC, MANITOWOC, AND SHEBOYGAN COUNTIES		
	Rates	Fringes
Bricklayer.....	\$ 24.18	9.30
-----		
BRWI0013-002 06/01/2002		
DANE, GRANT, IOWA, AND RICHLAND COUNTIES		
	Rates	Fringes
Bricklayer.....	\$ 25.57	9.60
-----		
BRWI0019-002 06/01/2002		
BARRON, BUFFALO, BURNETT, CHIPPEWA, DUNN, EAU CLAIRE, PEPIN, PIERCE, POLK, RUSK, ST. CROIX, SAWYER AND WASHBURN COUNTIES		
	Rates	Fringes
Bricklayer.....	\$ 23.83	9.65
-----		
BRWI0021-002 06/01/2002		
DODGE AND JEFFERSON COUNTIES		
	Rates	Fringes
Bricklayer.....	\$ 25.89	9.28
-----		
BRWI0034-002 06/01/2002		
COLUMBIA AND SAUK COUNTIES		
	Rates	Fringes
Bricklayer.....	\$ 25.75	9.42
-----		
CARP0087-001 06/04/2001		
BURNETT (W. of Hwy 48), PIERCE (W. of Hwy 29), POLK (W. of Hwys 35, 48 & 65), AND ST. CROIX (W. of Hwy 65) COUNTIES		
	Rates	Fringes
Carpenter & Piledrivermen.....	\$ 20.79	9.23
-----		
CARP0161-004 06/01/2002		
KENOSHA COUNTY		
	Rates	Fringes
Carpenter.....	\$ 24.71	9.51
-----		
CARP0161-005 06/01/2002		
RACINE COUNTY		
	Rates	Fringes
Carpenter.....	\$ 24.71	9.51
-----		
CARP0252-002 06/01/2002		
ADAMS, ASHLAND, BARRON, BAYFIELD (Eastern 2/3), BROWN, BUFFALO, BURNETT (E. of Hwy 48), CALUMET, CHIPPEWA, CLARK, COLUMBIA, CRAWFORD, DANE, DODGE, DOOR, DUNN, EAU CLAIRE, FLORENCE (except area bordering Michigan State Line), FOND DU LAC, FOREST, GRANT, GREEN, GREEN LAKE, IOWA, IRON, JACKSON, JEFFERSON, JUNEAU, KEWAUNEE, LA CROSSE, LAFAYETTE, LANGLADE, LINCOLN, MANITOWOC, MARATHON, MARINETTE (except N.E. corner), MARQUETTE, MENOMINEE, MONROE, OCONTO, ONEIDA, OUTAGAMIE, PEPIN, PIERCE (E. of Hwys 29 & 65), POLK (E. of Hwys 35, 48 & 65), PORTAGE, PRICE, RICHLAND, ROCK, RUSK, SAUK, SAWYER, SHAWANO, SHEBOYGAN, ST CROIX (E. of Hwy 65), TAYLOR, TREMPLEALEAU, VERNON, VILAS, WALWORTH, WASHBURN, WAUPACA, WAUSHARA, WINNEBAGO, AND WOOD COUNTIES		
	Rates	Fringes
Carpenter.....	\$ 23.19	8.88
Millwright.....	\$ 24.84	8.88
Piledriverman.....	\$ 23.69	8.88
-----		
CARP0264-003 06/01/2002		
MILWAUKEE, OZAUKEE, WAUKESHA, AND WASHINGTON COUNTIES		
	Rates	Fringes

Carpenter.....	\$ 26.25	9.18
-----		
CARP0361-004 05/01/2001		
BAYFIELD (Western 1/3) AND DOUGLAS COUNTIES		
	Rates	Fringes
Carpenter.....	\$ 22.26	9.00
-----		
CARP1146-003 06/01/2001		
MARINETTE COUNTY (Northeast part)		
	Rates	Fringes
Carpenter.....	\$ 22.61	7.97
Millwright.....	\$ 24.16	7.97
Piledriverman.....	\$ 23.11	7.97
-----		
* CARP1510-006 05/01/2003		
FLORENCE COUNTY (Area bordering Michigan)		
	Rates	Fringes
Carpenter.....	\$ 22.97	8.20
Millwright.....	\$ 26.59	8.42
Piledriverman.....	\$ 23.17	8.20
-----		
CARP2337-001 06/01/2002		
	Rates	Fringes
Piledriverman		
Zone A.....	\$ 25.05	12.17
Zone B.....	\$ 22.27	12.17
Zone C.....	\$ 22.57	11.77
Zone D.....	\$ 23.87	10.62
Zone E.....	\$ 23.87	10.62
ZONE DEFINITIONS		
ZONE A: MILWAUKEE, OZAUKEE, WAUKESHA AND WASHINGTON COUNTIES		
ZONE B: KENOSHA COUNTY		
ZONE C: RACINE COUNTY (East of Hwy 75)		
ZONE D: JEFFERSON (South of I-94), RACINE (West of Hwy 75),		
and WALWORTH COUNTIES		
ZONE E: DODGE AND JEFFERSON (North of I-94) COUNTIES		
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CARP2337-003 06/01/2002		
	Rates	Fringes
Millwright		
Zone A.....	\$ 25.32	11.88
Zone B.....	\$ 24.27	11.68
Zone C.....	\$ 24.17	11.68
Zone D.....	\$ 25.52	10.48
Zone E.....	\$ 25.57	10.23
ZONE DEFINITIONS		
ZONE A: MILWAUKEE, OZAUKEE, WAUKESHA AND WASHINGTON COUNTIES		
ZONE B: KENOSHA COUNTY		
ZONE C: RACINE COUNTY (Area East of Hwy 75)		
ZONE D: JEFFERSON (South of I-94), RACINE (West of Hwy 75),		
and WALWORTH COUNTIES		
ZONE E: DODGE AND JEFFERSON (North of I-94) COUNTIES		
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ELEC0014-002 12/01/2003		
ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CHIPPEWA, CLARK		
(except Maryville, Colby, Unity, Sherman, Fremont, Lynn &		
Sherwood), CRAWFORD, DUNN, EAU CLAIRE, GRANT, IRON, JACKSON, LA		
CROSSE, MONROE, PEPIN, PIERCE, POLK, PRICE, RICHLAND, RUSK, ST		
CROIX, SAWYER, TAYLOR, TREMPPEALEAU, VERNON, AND WASHBURN		
COUNTIES		
	Rates	Fringes
Electricians:.....	\$ 26.34	27.8%+4.00
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ELEC0127-002 09/01/2000		
KENOSHA COUNTY		
	Rates	Fringes

Electricians:.....	\$ 26.71	23.8%+3.00
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ELEC0158-002 06/01/2002  
 BROWN, DOOR, KEWAUNEE, MANITOWOC (except Schleswig),  
 MARINETTE(Wausaukee and area South thereof), OCONTO, MENOMINEE  
 (East of a line 6 miles West of the West boundary of Oconto  
 County), SHAWANO (Except Area North of Townships of Aniwa and  
 Hutchins) COUNTIES

	Rates	Fringes
Electricians:.....	\$ 24.53	24.75%+5.01

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ELEC0159-003 06/01/2001  
 COLUMBIA, DANE, DODGE (Area West of Hwy 26, except Chester and  
 Emmet Townships), GREEN, LAKE (except Townships of Berlin,  
 Seneca, and St. Marie), IOWA, MARQUETTE (except Townships of  
 Neshkoka, Crystal Lake, Newton, and Springfield), and SAUK  
 COUNTIES

	Rates	Fringes
Electricians:.....	\$ 25.83	9.95

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ELEC0219-004 06/01/2000  
 FLORENCE COUNTY (Townships of Aurora, Commonwealth, Fern,  
 Florence and Homestead) AND MARINETTE COUNTY (Township of  
 Niagara)

	Rates	Fringes
Electricians:		
Electrical contracts		
over \$90,000.....	\$ 23.86	10.22
Electrical contracts		
under \$90,000.....	\$ 20.46	7.11

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ELEC0242-005 06/01/2002  
 DOUGLAS COUNTY

	Rates	Fringes
Electricians:.....	\$ 26.14	49.5%

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ELEC0388-002 06/01/2002  
 ADAMS, CLARK (Colby, Freemont, Lynn, Mayville, Sherman,  
 Sherwood, Unity), FOREST, JUNEAU, LANGLADE, LINCOLN, MARATHON,  
 MARINETTE (Area North of the town of Wausaukee), MENOMINEE  
 (Area West of a line 6 miles West of the West boundary of  
 Oconto County), ONEIDA, PORTAGE, SHAWANO (Area North of the  
 townships of Aniwa and Hutchins), VILAS AND WOOD COUNTIES

	Rates	Fringes
Electricians:.....	\$ 24.12	10.65

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ELEC0430-002 06/01/2002  
 RACINE COUNTY (Except Burlington Township)

	Rates	Fringes
Electricians:.....	\$ 27.22	26.5%+4.98

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ELEC0494-005 06/01/2002  
 MILWAUKEE, OZAUCREE, WASHINGTON, AND WAUKESHA COUNTIES

	Rates	Fringes
Electricians:.....	\$ 25.73	14.34

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\* ELEC0494-006 06/01/2003  
 CALUMET (Township of New Holstein), FOND DU LAC (Except  
 Waupun), MANITOWOC (Schleswig), and SHEBOYGAN COUNTIES

	Rates	Fringes
Electricians:.....	\$ 23.73	14.27

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ELEC0577-003 06/01/2002  
 CALUMET (except Township of New Holstein), GREEN LAKE (N. part  
 including Townships of Berlin, St Marie, and Seneca), MARQUETTE  
 (N. part including Townships of Crystal Lake, Neshkoro, Newton,

and Springfield), OUTAGAMIE, WAUPACA, WAUSHARA, AND WINNEBAGO  
COUNTIES

	Rates	Fringes
Electricians:.....	\$ 24.70	23.3%+4.85

ELEC0890-003 06/01/2003

DODGE (Emmet Township only), GREEN, JEFFERSON, LAFAYETTE,  
RACINE (Burlington Township), ROCK AND WALWORTH COUNTIES

	Rates	Fringes
Electricians:.....	\$ 25.75	12.85

ELEC0953-001 07/01/2003

	Rates	Fringes
Line Construction:		
(1) Lineman.....	\$ 28.21	3.75+25.75%
(2) Heavy Equipment Operator.....	\$ 25.39	3.75+25.75%
(3) Equipment Operator.....	\$ 22.57	3.75+25.75%
(4) Heavy Groundman Driver.....	\$ 19.75	3.75+25.75%
(5) Light Groundman Driver.....	\$ 18.34	3.75+25.75%
(6) Groundman.....	\$ 15.52	3.75+25.75%

ENGI0139-005 06/01/2003

	Rates	Fringes
Power Equipment Operator		
Group 1.....	\$ 27.02	12.68
Group 2.....	\$ 26.52	12.68
Group 3.....	\$ 26.02	11.60
Group 4.....	\$ 25.76	12.68
Group 5.....	\$ 25.47	12.68
Group 6.....	\$ 25.26	12.68

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, tower cranes, and derricks with or without  
attachments with a lifting capacity of over 100 tons; or  
cranes, tower cranes, and derricks with boom, leads and/or  
jib lengths measuring 176 feet or longer.

GROUP 2: Cranes, tower cranes and derricks with or without  
attachments with a lifting capacity of 100 tons or less; or  
cranes, tower cranes, and derricks with boom, leads, and/or  
jibs lengths measuring 175 feet or under and backhoes  
(excavators) having a manufacturers rated capacity of 3 cubic  
yards and over; caisson rigs; pile driver; dredge operator;  
dredge engineer

GROUP 3: Mechanic or welder - Heavy duty equipment; cranes  
with a lifting capacity of 25 tons or under; concrete breaker  
(manual or remote); vibratory/sonic concrete breaker;  
concrete laser screed; concrete slipform paver; concrete  
batch plant operator; concrete pvt. spreader - heavy duty  
(rubber tired); concrete spreader & distributor; automatic  
subgrader (concrete); concrete grinder & planing machine;  
concrete slipform curb & gutter machine; slipform concrete  
placer; tube finisher; hydro blaster (10,000 psi & over);  
bridge paver; concrete conveyor system; concrete pump;  
stabilizing mixer (self-propelled); shoulder widener; asphalt  
plant engineer; bituminous paver; bump cutter & grooving  
machine; milling machine; screed (bituminous paver); asphalt  
heater, planer & scarifier; backhoes (excavators) having a  
manufacturer's rated capacity of under 3 cu yds; grader or  
motor patrol; tractor (scraper, dozer, pusher, loader);  
scraper - rubber tired (single or twin engine); endloader;  
hydraulic backhoe (tractor type); trenching machine; skid  
rigs; tractor, side boom (heavy); drilling or boring machine  
(mechanical heavy); roller over 5 tons; percussion or rotary  
drilling machine; air track; blaster; loading machine

(conveyor); tugger; boatmen; winches & A-frames; post driver; material hoist  
 GROUP 4: Greaser, roller steel (5 tons or less); roller (pneumatic tired) - self propelled; tractor (mounted or towed compactors & light equipment); shouldering machine; self-propelled chip spreader; concrete spreader; finishing machine; mechanical float; curing machine; power subgrader; joint sawer (multiple blade) belting machine; burlap machine; texturing machine; tractor endloader (rubber tired) - light; jeep digger; forklift; mulcher; launch operator; fireman, environmental burner  
 GROUP 5: Air compressor; power pack; vibrator hammer and extractor; heavy equipment, leadman; tank car heaters; stump chipper; curb machine operator; proportioning plants; generators; mudjack operator; rock breaker; crusher or screening plant; screed (milling machine); automatic belt conveyor and surge bin; pug mill operator  
 GROUP 6: Oiler; pump (over 3 inches)

-----  
 ENGI0139-008 06/01/2003

STATEWIDE EXCEPT KENOSHA, MILWAUKEE, OZAUKEE, RACINE, WASHINGTON, AND WAUKESHA COUNTIES

	Rates	Fringes
Power Equipment Operator		
Lock & Dam and River Work		
Group 1.....	\$ 27.27	12.60
Group 2.....	\$ 26.77	12.60
Group 3.....	\$ 26.27	12.60
Group 4.....	\$ 25.74	12.60
Group 5.....	\$ 23.67	12.60
Group 6.....	\$ 23.04	12.60

#### POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Cranes, Tower Cranes and Derricks with or without attachments with a lifting capacity of over 100 tons; Cranes, Tower Cranes, and Derricks with boom, leads and/or jib lengths 176 ft or longer.

GROUP 2: Backhoes (Excavators) having a manufacturer's rated capacity of 3 cu yd and over; Cranes, Tower Cranes and Derricks with or without attachments with a lifting capacity of 100 tons or less; Cranes, Tower Cranes, and Derricks with boom, leads, and/or jib lengths 175 ft or less; Caisson Rigs; Pile Driver

GROUP 3: Backhoes (Excavators) under 3 cu yd; Travelling Crane (bridge type); Milling Machine; Concrete Paver over 27 E; Concrete Spreader and Distributor; Concrete Laser Screed; Concrete Grinder and Planing Machine; Slipform Curb and Gutter Machine; Boring Machine (Directional); Dredge Operator; Skid Rigs

GROUP 4: Hydraulic Backhoe (tractor or truck mounted); Hydraulic Crane, 10 tons or less; Tractor, Bulldozer, or End Loader (over 40 hp); Motor Patrol; Scraper Operator; Bituminous Plant and Paver Operator; Screed-Milling Machine; Roller over 5 tons; Concrete and Grout Pumps; Hydro Blaster, 10,000 psi and over; Rotary Drill Operator; Percussion Drilling Machine; Air Track Drill with or without integral hammer; Blaster; Boring Machine (vertical or horizontal); Side Boom; Trencher, wheel type or chain type having 8 inch or larger bucket; Rail Leveling Machine (Railroad); Tie Placer; Tie Extractor; Tie Tamper; Stone Leveler; Straddle Carrier; Material Hoists; Stack Hoist; Man Hoists; Mechanic and Welder

GROUP 5: Tractor, Bulldozer, or End Loader (over 40 hp); Tampers -Compactors, riding type; Stump Chipper, large; Roller, Rubber Tire; Backfiller; Trencher, chain type (bucket under 8 inch); Concrete Auto Breaker, large; Concrete

Finishing Machine (road type); Concrete Batch Hopper;  
Concrete Conveyor Systems; Concrete Mixers, 14S or over;  
Pumps, Screw Type and Gypsum); Hydrohammers, small; Brooms  
and Sweepers; Lift Slab Machine; Roller under 5 tons;  
Industrial Locomotives; Fireman (Pile Drivers and Derricks);  
Pumps (well points); Hoists, automatic; A-Frames and Winch  
Trucks; Hoists (tuggers); Boats (Tug, Safety, Work Barges and  
Launches); Assistant Engineer

GROUP 6: Shouldering Machine Operator; Farm or Industrial  
Tractor mounted equipment; Post Hole Digger; Auger (vertical  
and horizontal); Skid Steer Loader with or without  
attachments; Robotic Tool Carrier with or without  
attachments; Power Pack Vibratory/Ultra Sound Driver and  
Extractor; Fireman (Asphalt Plants); Screed Operator; Stone  
Crushers and Screening Plants; Air, Electric, Hydraulic Jacks  
(Slip Form); Prestress Machines; Air Compressor, 400 CFM or  
over; Refrigeration Plant/Freeze Machine; Boiler Operators  
(temporary heat) Forklifts; Welding Machines; Generators,  
over or under 150 kw; Compressors, under 400 CFM; Heaters,  
Mechanical; Combination small equipment operator; Winches,  
small electric; Oiler; Greaser; Conveyor; Elevator Operator

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IRON0008-002 06/01/2002

BROWN, CALUMET, DOOR, FOND DU LAC, KEWAUNEE, MANITOWOC,  
MARINETTE, OCONTO, OUTAGAMI, SHAWANO, SHEBOYGAN, AND WINNEBAGO  
COUNTIES:

	Rates	Fringes
Ironworker.....	\$ 24.11	12.58

---

IRON0008-003 06/01/2002

KENOSHA, MILWAUKEE, OZAUKEE, RACINE, WALWORTH (N.E. 2/3),  
WASHINGTON, AND WAUKESHA COUNTIES

	Rates	Fringes
Ironworker.....	\$ 25.92	12.58

---

IRON0383-001 06/01/2002

ADAMS, COLUMBIA, CRAWFORD, DANE, DODGE, FLORENCE, FOREST,  
GRANT, GREENE, (Excluding S.E. tip), GREEN LAKE, IOWA,  
JEFFERSON, JUNEAU, LA CROSSE, LAFAYETTE, LANGLADE, MARATHON,  
MARQUETTE, MENOMINEE, MONROE, PORTAGE, RICHLAND, ROCK (Northern  
area, vicinity of Edgerton and Milton), SAUK, VERNON, WAUPACA,  
WAUSHARA, AND WOOD COUNTIES

	Rates	Fringes
Ironworker.....	\$ 24.55	11.61

---

IRON0498-005 06/01/2002

GREEN (S.E. 1/3), ROCK (South of Edgerton and Milton), and  
WALWORTH (S.W. 2/3) COUNTIES:

	Rates	Fringes
Ironworker.....	\$ 28.50	17.375

---

IRON0512-008 05/01/2003

BARRON, BUFFALO, CHIPPEWA, CLARK, DUNN, EAU CLAIRE, JACKSON,  
PEPIN, PIERCE, POLK, RUSK (S.W. half), ST CROIX, TAYLOR, AND  
TREMPEALEAU COUNTIES

	Rates	Fringes
Ironworker.....	\$ 29.50	11.84

---

IRON0563-004 05/01/2003

ASHLAND, BAYFIELD, BURNETT, DOUGLAS, IRON, LINCOLN, ONEIDA,  
PRICE, RUSK (N.E. half), SAWYER, VILAS AND WASHBURN COUNTIES

	Rates	Fringes
Ironworker.....	\$ 24.33	13.75

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LABO0113-002 06/01/2003

MILWAUKEE AND WAUKESHA COUNTIES

	Rates	Fringes
Laborers:		
Group 1.....	\$ 20.92	9.42
Group 2.....	\$ 21.07	9.42
Group 3.....	\$ 21.27	9.42
Group 4.....	\$ 21.42	9.42
Group 5.....	\$ 21.57	9.42
Group 6.....	\$ 17.41	9.42

LABORERS CLASSIFICATIONS

GROUP 1: General Laborer; Tree Trimmer; Conduit Layer; Demolition and Wrecking Laborer; Guard Rail, Fence, and Bridge Builder; Landscaper; Multiplate Culvert Assembler; Stone Handler; Bituminous Worker (Shoveler, Loader, and Utility Man); Batch Truck Dumper or Cement Handler; Bituminous Worker (Dumper, Ironer, Smoother, and Tamper); Concrete Handler

GROUP 2: Air Tool Operator; Joint Sawyer and Filler (Pavement); Vibrator or Tamper Operator (Mechanical Hand Operated); Chain Saw Operator; Demolition Burning Torch Laborer

GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter (Curb, Sidewalk, and Pavement); Strike Off Man

GROUP 4: Line and Grade Specialist

GROUP 5: Blaster and Powderman

GROUP 6: Flagperson; traffic control person

LABO0113-003 06/01/2003

OZAUKEE AND WASHINGTON COUNTIES

	Rates	Fringes
Laborers:		
Group 1.....	\$ 20.17	9.42
Group 2.....	\$ 20.27	9.42
Group 3.....	\$ 20.32	9.42
Group 4.....	\$ 20.52	9.42
Group 5.....	\$ 20.37	9.42
Group 6.....	\$ 17.26	9.42

LABORERS CLASSIFICATIONS

GROUP 1: General Laborer; Tree Trimmer; Conduit Layer; Demolition and Wrecking Laborer; Guard Rail, Fence, and Bridge Builder; Landscaper; Multiplate Culvert Assembler; Stone Handler; Bituminous Worker (Shoveler, Loader, and Utility Man); Batch Truck Dumper or Cement Handler; Bituminous Worker (Dumper, Ironer, Smoother, and Tamper); Concrete Handler

GROUP 2: Air Tool Operator; Joint Sawyer and Filler (Pavement); Vibrator or Tamper Operator (Mechanical Hand Operated);

GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter (Curb, Sidewalk, and Pavement); Strike Off Man

GROUP 4: Line and Grade Specialist

GROUP 5: Blaster; powderman

GROUP 6: Flagperson and Traffic Control Person

LABO0140-002 06/01/2003

ADAMS, ASHLAND, BARRON, BAYFIELD, BROWN, BUFFALO, BURNETT, CALUMET, CHIPPEWA, CLARK, COLUMBIA, CRAWFORD, DODGE, DOOR, DOUGLAS, DUNN, EAU CLAIRE, FLORENCE, FOND DU LAC, FOREST, GRANT, GREEN, GREEN LAKE, IRON, JACKSON, JUNEAU, IOWA, JEFFERSON, KEWAUNEE, LA CROSSE, LAFAYETTE, LANGLADE, LINCOLN, MANITOWOC, MARATHON, MARINETTE, MARQUETTE, MENOMINEE, MONROE, OCONTO, ONEIDA, OUTAGAMIE, PEPIN, PIERCE, POLK, PORTAGE, PRICE, RICHLAND, ROCK, RUSK, SAUK, SAWYER, SHAWANO, SHEBOYGAN, ST. CROIX, TAYLOR, TREMPLEAU, VERNON, VILLAS, WALWORTH, WASHBURN, WAUPACA, WAUSHARA, WINNEBAGO, AND WOOD COUNTIES

	Rates	Fringes
Laborers:		

Group 1.....	\$ 20.75	7.77
Group 2.....	\$ 20.85	7.77
Group 3.....	\$ 20.90	7.77
Group 4.....	\$ 21.10	7.77
Group 5.....	\$ 20.95	7.77
Group 6.....	\$ 17.38	7.77

LABORERS CLASSIFICATIONS

GROUP 1: General Laborer; Tree Trimmer; Conduit Layer;  
Demolition and Wrecking Laborer; Guard Rail, Fence, and  
Bridge Builder; Landscaper; Multiplate Culvert Assembler;  
Stone Handler; Bituminous Worker (Shoveler, Loader, and  
Utility Man); Batch Truck Dumper or Cement Handler;  
Bituminous Worker (Dumper, Ironer, Smoother and Tamper);  
Concrete Handler

GROUP 2: Air Tool Operator; Joint Sawyer and Filler  
(Pavement); Vibrator or Tamper Operator (Mechanical Hand  
Operated)

GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter  
(Curb, Sidewalk and Pavement); Strike Off Man

GROUP 4: Line and Grade Specialist

GROUP 5: Blaster; powderman

GROUP 6: Flagperson; Traffic Control

LABO0237-002 06/01/2003

KENOSHA AND RACINE COUNTIES

	Rates	Fringes
Laborers:		
Group 1.....	\$ 19.02	10.38
Group 2.....	\$ 19.17	10.38
Group 3.....	\$ 19.37	10.38
Group 4.....	\$ 19.34	10.38
Group 5.....	\$ 19.67	10.38
Group 6.....	\$ 16.16	10.38

LABORERS CLASSIFICATIONS:

GROUP 1: General laborer; Tree Trimmer; Conduit Layer;  
Demolition and Wrecking Laborer; Guard Rail, Fence, and  
Bridge Builder; Landscaper; Multiplate Culvert Assembler;  
Stone Handler; Bituminous Worker (Shoveler, Loader, and  
Utility Man); Batch Truck Dumper or Cement Handler;  
Bituminous worker (Dumper, Ironer, Smoother, and Tamper);  
Concrete Handler

GROUP 2: Air Tool Operator; Joint Sawyer and Filler  
(Pavement); Vibrator or Tamper Operator (Mechanical Hand  
Operated); Chain Saw Operator; Demolition Burning Torch  
Laborer

GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter  
(Curb, Sidewalk, and Pavement); Strike Off Man

GROUP 4: Line and Grade Specialist

GROUP 5: Blaster and Powderman

GROUP 6: Flagman; traffic control person

LABO0464-003 06/01/2003

DANE COUNTY

	Rates	Fringes
Laborers:		
Group 1.....	\$ 20.63	8.17
Group 2.....	\$ 20.73	8.17
Group 3.....	\$ 20.78	8.17
Group 4.....	\$ 20.98	8.17
Group 5.....	\$ 20.83	8.17
Group 6.....	\$ 16.98	8.17

LABORERS CLASSIFICATIONS:

GROUP 1: General Laborer; Tree Trimmer; Conduit Layer;  
Demolition and Wrecking Laborer; Guard Rail, Fence, and  
Bridge Builder; Landscaper; Multiplate Culvert Assembler;  
Stone Handler; Bituminous Worker (Shoveler, Loader, and

Utility Man); Batch Truck Dumper or Cement Handler;  
 Bituminous Worker (Dumper, Ironer, Smoother, and Tamper);  
 Concrete Handler  
 GROUP 2: Air Tool Operator; Joint Sawyer and Filler  
 (Pavement); Vibrator or Tamper Operator (Mechanical Hand  
 Operated); Chain Saw Operator; Demolition Burning Torch  
 Laborer  
 GROUP 3: Bituminous Worker (Raker and Luteman); Formsetter  
 (Curb, Sidewalk, and Pavement); Strike Off Man  
 GROUP 4: Line and Grade Specialist  
 GROUP 5: Blaster; Powderman  
 GROUP 6: Flagperson and Traffic Control Person

-----  
 PAIN0106-008 05/01/2001

ASHLAND, BAYFIELD, BURNETT, AND DOUGLAS COUNTIES

	Rates	Fringes
Painters:		
New:		
Brush, Roller.....	\$ 22.73	7.73
Spray, Sandblast, Steel.....	\$ 23.33	7.73
Repaint:		
Brush, Roller.....	\$ 21.23	7.73
Spray, Sandblast, Steel.....	\$ 21.83	7.73

-----  
 PAIN0108-002 06/01/2000

RACINE COUNTY

	Rates	Fringes
Painters:		
Brush, Roller.....	\$ 20.50	7.40
Spray & Sandblast.....	\$ 21.50	7.40

-----  
 PAIN0259-002 06/01/2003

BARRON, CHIPPEWA, DUNN, EAU CLAIRE, PEPIN, PIERCE, POLK, RUSK,  
 SAWYER, ST. CROIX, AND WASHBURN COUNTIES

	Rates	Fringes
Painters:.....	\$ 21.58	7.33

-----  
 PAIN0259-004 06/01/2002

BUFFALO, CRAWFORD, JACKSON, LA CROSSE, MONROE, TREMPLEAU, AND  
 VERNON COUNTIES

	Rates	Fringes
Painter.....	\$ 15.70	5.82

-----  
 PAIN0781-002 06/01/2002

JEFFERSON, MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES

	Rates	Fringes
Painters:		
Bridge.....	\$ 23.69	9.22
Brush.....	\$ 23.34	9.22
Spray & Sandblast.....	\$ 24.09	9.22

-----  
 PAIN0802-002 06/01/2002

COLUMBIA, DANE, DODGE, GRANT, GREEN, IOWA, LAFAYETTE, RICHLAND,  
 ROCK, AND SAUK COUNTIES

	Rates	Fringes
Painters:		
Brush.....	\$ 21.50	7.60
Structural Steel, Spray.....	\$ 22.50	7.60

-----  
 PAIN0802-003 06/01/2002

BROWN, CALUMET, DOOR, FOND DU LAC, GREEN LAKE, KEWAUNEE,  
 MANITOWOC, MARINETTE, MARQUETTE, OCONTO, OUTAGAMIE, SHAWANO,  
 SHEBOYGAN, WAUSHARA, WAUPACA, AND WINNEBAGO COUNTIES

	Rates	Fringes
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Painters:.....\$ 18.96 4.84

PAIN0802-006 06/01/2002

ADAMS, CLARK, FOREST, IRON, JUNEAU, LANGLADE, LINCOLN,  
MARATHON, MENOMINEE, ONEIDA, PORTAGE, PRICE, TAYLOR, WOOD, AND  
VILAS COUNTIES

	Rates	Fringes
Painters:.....	\$ 20.90	5.11

PAIN0934-001 06/01/2002

KENOSHA AND WALWORTH COUNTIES

	Rates	Fringes
Painters:		
Brush.....	\$ 22.98	7.25
Spray.....	\$ 23.98	7.25
Structural Steel.....	\$ 23.13	7.25

PAIN1011-002 06/01/2001

FLORENCE COUNTY

	Rates	Fringes
Painters:.....	\$ 19.40	3.95

PLAS0599-010 06/01/2002

	Rates	Fringes
Cement Mason		
Area 1.....	\$ 23.90	9.30
Area 2.....	\$ 23.00	8.30
Area 3.....	\$ 22.30	9.30
Area 4.....	\$ 24.30	8.05
Area 5.....	\$ 23.40	8.95
Area 6.....	\$ 21.55	10.80

AREA DESCRIPTIONS

AREA 1: BAYFIELD, DOUGLAS, PRICE, SAYER, AND WASHBURN  
COUNTIES

AREA 2: ADAMS, ASHLAND, BARRON, BROWN, BURNETT, CALUMET,  
CHIPPEWA, CLARK, COLUMBIA, DODGE, DOOR, DUNN, FLORENCE, FOND  
DU LAC, FOREST, GREEN LAKE, IRON, JEFFERSON, KEWAUNEE,  
LANGLADE, LINCOLN, MANITOWOC, MARATHON, MARINETTE, MARQUETTE,  
MENOMINEE, OCONTO, ONEIDA, OUTAGAMIE, POLK, PORTAGE, RUSK, ST  
CROIX, SAUK, SHAWANO, SHEBOYGAN, TAYLOR, VILAS, WALWORTH,  
WAUPACA, WAUSHARA, WINNEBAGO, AND WOOD COUNTIES

AREA 3: BUFFALO, CRAWFORD, EAU CLAIRE, JACKSON, JUNEAU, LA  
CROSSE MONROE, PEPIN, PIERCE, RICHLAND, TREMPLEAU, AND  
VERNON COUNTIES

AREA 4: MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES

AREA 5: DANE, GRANT, GREEN, IOWA, LAFAYETTE, AND ROCK  
COUNTIES

AREA 6: KENOSHA AND RACINE COUNTIES

PLUM0011-003 05/01/2001

ASHLAND, BAYFIELD, BURNETT, DOUGLAS, IRON, SAWYER, AND WASHBURN  
COUNTIES

	Rates	Fringes
Plumber.....	\$ 26.35	9.15

PLUM0075-002 06/01/2002

MILWAUKEE, OZAUKEE, WASHINGTON, AND WAUKESHA COUNTIES

	Rates	Fringes
Plumber.....	\$ 27.96	8.83
-----		
PLUM0075-004 06/01/2002		
DODGE (Watertown), GREEN, JEFFERSON, LAFAYETTE, AND ROCK COUNTIES		
	Rates	Fringes
Plumber/Pipefitter.....	\$ 28.21	8.83
-----		
PLUM0075-009 06/01/2002		
COLUMBIA, DANE, IOWA, MARQUETTE, RICHLAND AND SAUK COUNTIES		
	Rates	Fringes
Plumber.....	\$ 29.41	7.38
-----		
PLUM0118-002 06/01/2003		
KENOSHA, RACINE, AND WALWORTH COUNTIES		
	Rates	Fringes
Plumber and Steamfitter.....	\$ 27.66	12.09
-----		
PLUM0400-003 06/01/2003		
ADAMS,BROWN, CALUMET, DODGE (except Watertown), DOOR, FOND DU LAC, GREEN LAKE,KEWAUNEE, MANITOWOC, MARINETTE (except Niagara), MENOMINEE, OCONTO, OUTAGAMIE, SHAWANO, SHEBOYGAN, WAUPACA, WAUSHARA, AND WINNEBAGO COUNTIES		
	Rates	Fringes
Plumber/Pipefitter.....	\$ 26.15	10.79
-----		
PLUM0434-002 06/01/2002		
BARON, BUFFALO, CHIPPEWA, CLARK, CRAWFORD, DUNN, EAU CLAIRE, FLORENCE, FOREST, GRANT, JACKSON, JUNEAU, LA CROSSE, LANGLADE, LINCOLN, MARATHON, MONROE, ONEIDA, PEPIN, PIERCE, POLK, PORTAGE, PRICE, RUSK, ST. CROIX, TAYLOR, TREMPLEAU, VERNON, VILAS, AND WOOD COUNTIES		
	Rates	Fringes
Pipefitter.....	\$ 25.15	9.72
-----		
PLUM0506-007 06/01/2000		
MARINETTE COUNTY (Niagara only)		
	Rates	Fringes
Plumber/Pipefitter		

1	(1) Jobs where plumbing	
2	bid is \$50,000 or less.....\$ 17.48	10.00
3	(2) All other work.....\$ 24.03	10.00

4

5 -----

6 \* TEAM0039-002 05/01/2003

7		
8		
9		
0	Truck drivers:	
1	2 Axle Trucks.....\$ 19.17	10.69
2	3 or more axles;	
3	Euclids or Dumptor,	
4	Articulated Truck,	
5	Mechanic.....\$ 19.32	10.69

6

7 -----

8

9 WELDERS - Receive rate prescribed for craft performing

0 operation to which welding is incidental.

1 =====

2

3 Unlisted classifications needed for work not included within

4 the scope of the classifications listed may be added after

5 award only as provided in the labor standards contract clauses

6 (29CFR 5.5 (a) (1) (ii)).

7

8 -----

9

0 In the listing above, the "SU" designation means that rates

1 listed under the identifier do not reflect collectively

2 bargained wage and fringe benefit rates. Other designations

3 indicate unions whose rates have been determined to be

4 prevailing.

5

6 -----

7

8 WAGE DETERMINATION APPEALS PROCESS

9

0 1.) Has there been an initial decision in the matter? This can

1 be:

- 2
- 3 \* an existing published wage determination
  - 4 \* a survey underlying a wage determination
  - 5 \* a Wage and Hour Division letter setting forth a position on
  - 6 a wage determination matter
  - 7 \* a conformance (additional classification and rate) ruling

8

9 On survey related matters, initial contact, including requests

0 for summaries of surveys, should be with the Wage and Hour

1 Regional Office for the area in which the survey was conducted

2 because those Regional Offices have responsibility for the

3 Davis-Bacon survey program. If the response from this initial

4 contact is not satisfactory, then the process described in 2.)

5 and 3.) should be followed.

6

7 With regard to any other matter not yet ripe for the formal

8 process described here, initial contact should be with the

9 Branch of Construction Wage Determinations. Write to:

0

1 Branch of Construction Wage Determinations

2

3 Wage and Hour Division

4

5 U.S. Department of Labor

6

7 200 Constitution Avenue, N.W.

8

9 Washington, DC 20210

0

1 2.) If the answer to the question in 1.) is yes, then an  
2 interested party (those affected by the action) can request  
3 review and reconsideration from the Wage and Hour Administrator  
4 (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

5

6 Wage and Hour Administrator

7

8 U.S. Department of Labor

9

0 200 Constitution Avenue, N.W.

1

2 Washington, DC 20210

3

4 The request should be accompanied by a full statement of the  
5 interested party's position and by any information (wage  
6 payment data, project description, area practice material,  
7 etc.) that the requestor considers relevant to the issue.

8

9 3.) If the decision of the Administrator is not favorable, an  
0 interested party may appeal directly to the Administrative  
1 Review Board (formerly the Wage Appeals Board). Write to:

2

3 Administrative Review Board

4

5 U.S. Department of Labor

6

7 200 Constitution Avenue, N.W.

8

9 Washington, DC 20210

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1 4.) All decisions by the Administrative Review Board are final.

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3 =====

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5 END OF GENERAL DECISION

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SPRING LAKE ISLANDS

**SECTION 00830 – ATTACHMENTS**

**ATTACHMENT NO. B**

**MATERIAL SOURCES**



**SPRING LAKE ISLANDS, POOL 5  
APPROVED RIPRAP SOURCES**

<u>QUARRY NAME AND OPERATOR</u>	<u>QUARRY LOCATION</u>	<u>NOTES</u>
Highway 43 Quarry Milestone Materials 920 Tenth Ave. North Onalaska, WI 54650 (608) 783-6411	NW ¼, Sec. 16 T106N, R7W Winona County, Minnesota	1, 2
Feltes Quarry (aka: Kamla Quarry) Kraemer Company 820 Wachter Ave., Plain, WI 53577 (608) 546-2255	SE ¼, NE ¼, Sec. 6 T20N, R10W Buffalo County, Wisconsin	1, 2
Raatz Quarry Kraemer Company 820 Wachter Ave., Plain, WI 53577 (608) 546-2255	SW ¼, Sec. 12 T20N, R11W Buffalo County, Wisconsin	1, 2
Senn Quarry Kraemer Company 820 Wachter Ave., Plain, WI 53577 (608) 546-2255	Se ¼, Sec. 4 T19N, R11W, Buffalo County, WI	1, 2
Weaver Quarry Milestone Materials 920 Tenth Ave. North Onalaska, WI 54650 (608) 783-6411	SE ¼, NE ¼, Sec. 25 T109N, R10W Wabasha County, Minnesota	1, 2
Wender Quarry Kraemer Company 820 Wachter Ave., Plain, WI 53577 (608) 546-2255	SE ¼, Sec 3; and NE ¼. Sec 10 T20N, R112W, Buffalo County, WI	1, 2
<u>US GOVERNMENT FURNISHED</u> Rock Borrow Site	L&D 5 Dike	

NOTES:

1. Systematic blasting shall be preformed in order to minimize deleterious cracks in the final product.
2. Processing riprap with a vibrating grizzly is a minimum requirement.



SPRING LAKE ISLANDS

**SECTION 00830 – ATTACHMENTS**

**ATTACHMENT NO. C**

**USFWS SPECIAL USE PERMIT**





UNITED STATES DEPARTMENT OF THE INTERIOR  
FISH AND WILDLIFE SERVICE

Upper Mississippi River  
National Wildlife and Fish Refuge  
51 E. 4th St.  
Winona, MN 55987

**SPECIAL USE PERMIT**

Station No. to be Credited Permit No.  
**32579 - SB0403**

Date **June 3, 2004**

Period of Use (inclusive)

From **August 1, 2004**

To **June 30, 2006**

Permittee Name

US Army Corps of Engineers  
St. Paul District

Permittee Address

190 Fifth Street East  
St. Paul, MN 55101-1638

Purpose (specify in detail privilege requested, or units of products involved)

This permit supersedes Special Use Permit No. 32579-SB0401 dated March 8, 2004.

Access to dredge, construct islands and rock mounds, plant, turf, and perform other work in accordance with documents listed below for the Spring Lake Islands Habitat Rehabilitation and Enhancement Project, Upper Mississippi River, Pool 5, Spring Lake, Buffalo County, Wisconsin.

Description (specify unit numbers: metes and bounds, or other recognizable designations)

See US Army Corps of Engineers, St. Paul District documents titled "Upper Mississippi River System Environmental Management Program Definite Project Report (SP-25), Spring Lake Islands Habitat Rehabilitation and Enhancement Project, Buffalo County, Wisconsin, August 2003" and construction plans and specifications, "Spring Lake Islands" prepared spring 2004.

Amount of fee if not a fixed payment, specify rate and unit of charge:

- ☒ Payment Exempt - Justification:  
☐ Full Payment  
☐ Partial Payment - Balance of payments to be made as follows:

Record of Payments

N/A

Special Conditions

See attached "Special Conditions".

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the undersigned, subject to the terms, covenants, obligations, and reservations, expressed or implied herein, and to the conditions and requirements appearing on the reverse side.

Permittee Signature

*Melvin Gulan*, Eastern Area Engineer

Issuing Office Signature and Title

*Alan Gulan*, Refuge Mgr

## General Conditions

### 1. Payments

All payments shall be made on or before the due date to the local representative of the U.S. Fish and Wildlife Service (Service) by a postal money order or check made payable to the U.S. Fish and Wildlife Service.

### 2. Use limitations

The permittee's use of the described premises is limited to the purposes herein specified; does not unless provided for in this permit allow the permittee to restrict other authorized entry on to the permittee's area; and permits the Service to carry on whatever activities are necessary for (1) protection and maintenance of the premises and adjacent lands administered by the Service and (2) the management of wildlife and fish using the premises and other Service lands.

### 3. Damages

The United States shall not be responsible for any loss or damage to property including but not limited to growing crops, animals, and machinery; or injury to the permittee, or the permittee's relatives, or to the officers, agents, employees, or any others who are on the premises from instructions or by the sufferance of wildlife or employees or representatives of the Government carrying out their official responsibilities. ~~The permittee agrees to save the United States or any of its agencies harmless from any and all claims for damages or losses that may arise or be incident to the flooding of the premises resulting from any associated Government river and harbor, flood control, reclamation, or Tennessee Valley Authority activity.~~

### 4. Operating Rules and Laws

The permittee shall keep the premises in a neat and orderly condition at all times, and shall comply with all municipal, county and State laws applicable to the operations under the permit as well as all Federal laws, rules and regulations governing Service lands and the area described in this permit. The permittee shall comply with all instructions applicable to this permit issued by the Service officer in charge. The permittee shall take all reasonable precautions to prevent the escape of fires and to suppress fires and shall render all reasonable assistance in the suppression of fires.

### 5. Responsibility of Permittee

The permittee, by operating on the premises, shall be considered to have accepted these premises with all facilities, fixtures, or improvements in their existing condition as of the date of this permit. At the end of the period specified or upon earlier termination, the permittee shall give up the premises in as good an order and condition as when received except for reasonable wear, tear, or damage occurring without fault or negligence. ~~The permittee will fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on his/her part, or the part of anyone of the permittee's associates.~~

### 6. Revocation Policy

This permit may be revoked by a Service Regional Director without notice for noncompliance with the terms hereof or for violation of general and/or specific laws or regulations governing Service lands or for nonuse.

### 7. Compliance

Failure of the Service to insist upon a strict compliance with any of this permit's terms, conditions, and requirements shall not constitute a waiver or be considered as a giving up of the Service's right to thereafter enforce any of the permit's terms, conditions, or requirements.

### 8. Termination Policy

At the termination of this permit the permittee shall immediately give up possession to the Service representative, reserving, however, the rights specified in paragraph 9. If the permittee fails to do so, the permittee will pay the Government, as liquidated damages, an amount double the rate specified in this permit for the entire time possession is withheld. Upon yielding possession, the permittee will still be allowed to reenter as needed to remove his/her property as stated in paragraph 9. The acceptance of any fee for liquidated damages or any other act of administration relating to the continued tenancy is not to be considered as an affirmation of the permittees action nor shall it operate as a waiver of the Government's right to terminate or cancel the permit for the breach of any specified condition or requirement.

### 9. Removal of Permittee's Property

Upon the expiration or termination of this permit, if all rental charges and/or damage claims due to the Government have been paid, the permittee may, within a reasonable period as stated in the permit or as determined by the Service officer in charge but not to exceed 60 days, remove all structures, machinery, and/or other equipment, etc., from the premises for which the permittee is responsible. Within this period the permittee must also remove any other of the permittee's property including his/her acknowledged share of products or crops grown, cut, harvested, stored, or stacked on the premises. Upon failure to remove any of the above items within the aforesaid period, they shall become the property of the United States.

### 10. Transfer of Privileges

This permit is not transferable, and no privileges herein mentioned may be sublet or made available to any person or interest not mentioned in this permit. No interest hereunder may accrue through lien or be transferred to a third party without the approval of a Service Regional Director and the permit shall not be used for speculative purposes.

### 11. Conditions of Permit not Fulfilled

If the permittee fails to fulfill any of the conditions and requirements set forth herein, all money paid under this permit shall be retained by the Government to be used to satisfy as much of the permittee's obligation as possible.

### 12. Officials Barred from Participating

No Members of Congress or Resident Commissioner shall participate in any part of this contract or to any benefit that may arise from it, but this provision

## Privacy Act Statement - Special Use Permit

**NOTICE:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, please be advised that:

1. The issuance of a permit and collection of fees on lands of the National Wildlife Refuge System is authorized by the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd - 668ee), and the Refuge Recreation Act, (16 U.S.C. 460k-3); implemented by regulations in 50 CFR 25-36.

2. Information collected in issuing a permit may be used to evaluate and conclude the eligibility of, or merely document, permit applicants.

3. Routine use disclosures may also be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) from the record of the individual in response to an inquiry from a Congressional office made at the request of that individual; (4) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal Claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the Department (48FR 54716; December 6, 1983).

4. Any information requested is required to receive this permit. Failure to answer questions may jeopardize the eligibility of individuals to receive permits.

Special Conditions (continued) - Permit # 32579-SB0403

A. Coordinate all major design changes with the US Fish & Wildlife Service (Service). The Service shall comment on and approve of major changes prior to execution.

B. Include Service personnel listed below or their designated representatives in the preconstruction conference and pre and final inspections.

C. The layout of project features shall be field staked by the contractor per project specifications and approved by the Contracting Officer and the Service personnel listed below prior to execution.

D. Contact persons within the US Fish and Wildlife Service are Bob Drieslein, Winona District Manager (507-494-6229), and Sharonne Baylor, Environmental Engineer (507-494-6207).



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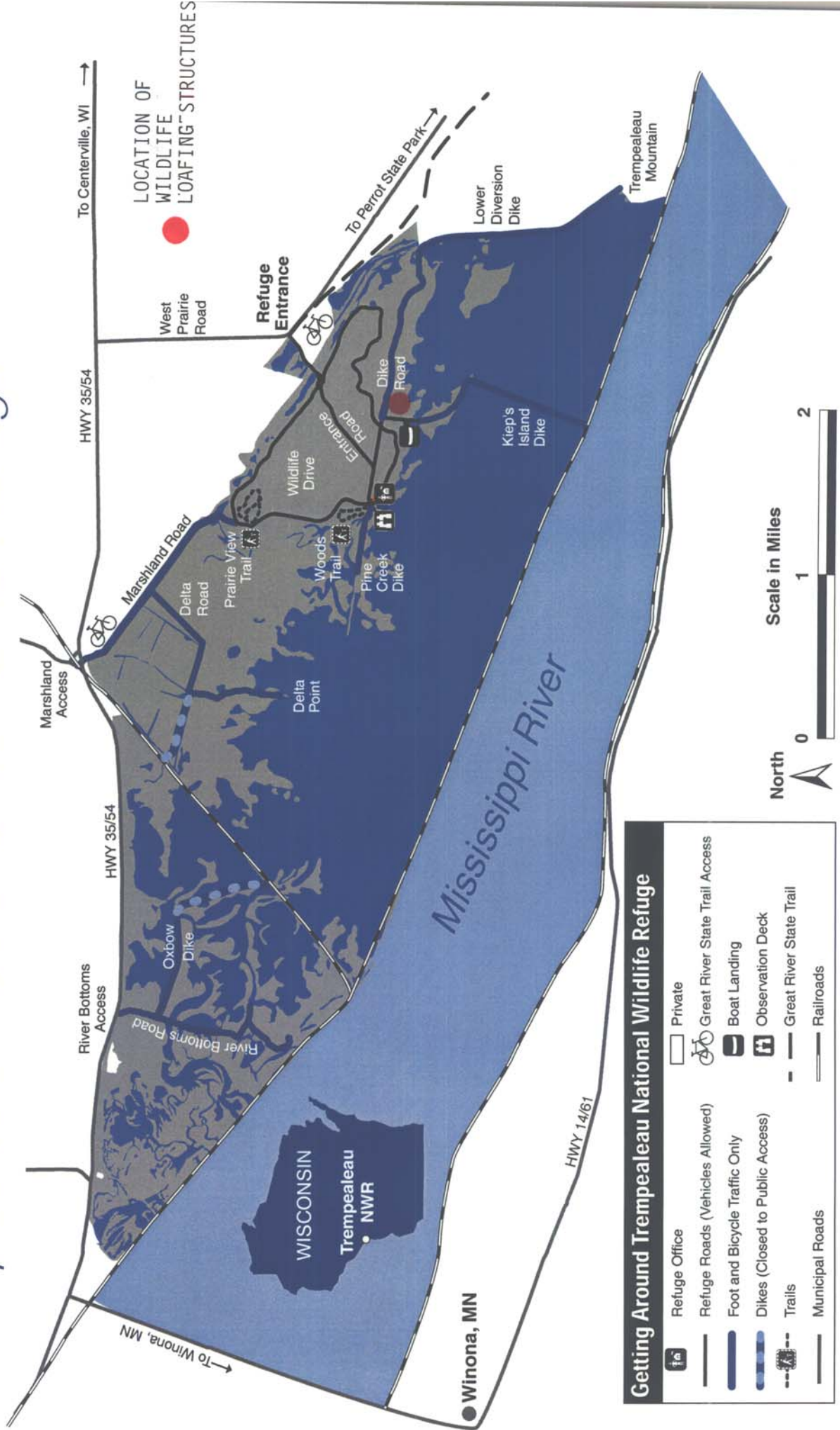
**SECTION 00830 – ATTACHMENTS**

**ATTACHMENT NO. D**

**LOCATION OF WILDLIFE LOAFING STRUCTURE TREE TRUNKS**



# Trempealeau National Wildlife Refuge





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SECTION 01000

GENERAL

PART 1 GENERAL

1.1 ORGANIZATION OF SPECIFICATIONS

The specifications which govern the materials and equipment to be furnished and the work to be performed under this contract are listed in the Table of Contents. No attempt has been made in the specifications to segregate work to be performed by any trade, craft, or subcontractor. Any segregation between the trades or crafts shall be solely a matter for agreement between the Contractor, Contractor's employees, and subcontractors.

1.2 REFERENCES

Reference to the standards, specifications, or codes of any technical society, organization, or association, or local, State, or Federal authority shall mean the specific edition or revision listed.

Various publications are referenced in other sections of the specifications to establish requirements for the work. These references are identified in each section by document number, date and title. The addresses, phone numbers, and Internet addresses (if available) for references cited in these specifications are listed in the Unified Facilities Guide Specification: UFGS 01090 SOURCES FOR REFERENCE PUBLICATIONS. UFGS 01090 is available on the TECHINFO page of the Corps of Engineers Huntsville District Internet site: <http://www.hnd.usace.army.mil/>.

1.3 MEASUREMENT AND PAYMENT

The Contractor shall be responsible for the work of this section, without any direct compensation being made other than the payment received for contract line items on the bidding schedule.

PART 2 PRODUCTS

2.1 RECYCLED/RECOVERED MATERIALS

Government procurement policy is to acquire, in a cost effective manner, items containing the highest percentage of recycled and recovered materials practicable consistent with maintaining a satisfactory level of competition without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials. The Environmental Protection Agency (EPA) has designated certain items which must contain a specified percent range of recovered or recycled materials. EPA designated products specified in this contract comply with the stated policy and with the EPA guidelines. The Contractor shall make all reasonable efforts to use recycled and recovered materials in providing the EPA designated products and in otherwise utilizing recycled and recovered materials in the execution of the work.

PART 3 EXECUTION

3.1 DISPOSAL OF DEBRIS AND WASTE

The Contractor's attention is directed to Section 01355 ENVIRONMENTAL PROTECTION and to the following CONTRACT CLAUSES: 52.236-7 PERMITS AND RESPONSIBILITIES; 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS; 52.236-10 OPERATIONS AND STORAGE AREAS; and 52.236-12 CLEANING UP. Burning will not be permitted at the project site and debris or waste shall not be left on the site. Disposal of clearing and grubbing debris shall be by one of the following methods:

3.1.1 Burning

Burning will not be permitted at the project site.

3.1.2 Disposal onsite of Woody Material

The Contractor may dispose of woody material encountered in dredging operations on the shoreline of constructed islands for habitat enhancement.

3.1.3 Disposal offsite for useful purposes

In the interest of conservation, it is required that the Contractor make a reasonable effort to dispose of the material offsite for some useful purpose. Timber may be cut into convenient lengths and utilized for making saw logs, posts, cordwood, wood chips for paper making or other uses, or other similar use.

3.1.4 Disposal in a locally operated sanitary landfill

Contractor shall select the disposal site with the approval of the Contracting Officer. The Contractor shall secure the required permits for disposal and provide copies of the permit to the Contracting Officer.

3.1.5 Disposal of Solid Construction Debris and Waste

Disposal of Solid Construction Debris and Waste shall consist of removal from Government property and disposal in compliance with Federal, State, and local requirements for solid waste disposal. Contractor shall select the disposal site with the approval of the Contracting Officer.

3.2 SCHEDULING

3.2.1 General

It shall be the responsibility of the Contractor to schedule and execute the work, incorporating the necessary requirements set forth in these specifications. The Contractor shall develop and submit a schedule in accordance with CONTRACT CLAUSE: 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS.

3.2.2 Notification

The Contractor shall inform the Government in writing within 5 days after receipt of notice to proceed and before work begins as to which hours of the day and days of the week for which work under this contract will be performed. The Contractor shall notify the Government at least 24 hours before work is to be conducted on overtime, in multiple shifts, on

weekends, or on Federal Government holidays.

### 3.2.3 Lock and Dam Operations

The Contractor shall not interfere with normal lock and dam operations. Lock and Dam personnel will not accept deliveries, phone calls, or mail or deliver messages for the Contractor.

### 3.3 OPTIONAL WORK ITEMS FOR DREDGING

The Government has a commitment to maintain a 9 foot navigation channel. If the Government decides there is risk of towboat grounding, the Contractor, at no additional cost to the Government, shall adjust its schedule to perform dredging at the area(s) of concern first. See Paragraph: Optional Bid Items in Section 02325 DREDGING.

### 3.4 WILDLIFE LOAFING STRUCTURES

As indicated on the drawings, the Contractor shall place cut tree trunks anchored in the shoreline of the Spring Lake Islands to serve as wildlife loafing structures. Each wildlife loafing structure shall consist of one tree trunk installed as indicated. The tree trunks to be utilized for constructing the wildlife loafing structures shall be provided by the Government and obtained at the Trempealeau National Wildlife Refuge as indicated on the map in Section 00830 ATTACHMENTS. Rock to be used in the Wildlife Loafing Structures shall be obtained from the Government furnished rock borrow area.

### 3.5 OTHER CONTRACTS

The Contractor shall coordinate with other contractors in the performance of the work and schedule such work to provide for a minimum of delays and interferences. Coordination shall be through the Contracting Officer. Work listed below is currently required under separate contract or is scheduled to be awarded as a separate contract prior to completion of work under this contract. These contracts will be considered in the application of CONTRACT CLAUSE: 52.236-8 OTHER CONTRACTS.

#### 3.5.1 List of other contracts

(1) Mechanical Maintenance Dredging, Mississippi and Minnesota Rivers, Minnesota, Wisconsin, Iowa, Illinois and Missouri. Contract DACW37-02-D-0007 was awarded to L&S Industrial Maine, Inc., for calendar year 2002, with options for calendar years 2003 and 2004.

(2) NOTE: Hydraulic maintenance dredging performed by Corps of Engineers crews shall also be considered in the application of CONTRACT CLAUSE: 52.236-8 OTHER CONTRACTS.

### 3.6 DIVING

All diving shall be performed in accordance with the U.S. Army Corps of Engineers "Safety and Health Requirements Manual" EM 385-1-1, Section 30. Prior to submitting bids on this contract, Contractor's and their diving Subcontractor (if applicable), shall obtain copies of this manual, and plan their procedures and staffing requirement accordingly. The Corps of Engineers "Safety and Health Requirements Manual" EM 385-1-1 is available to prospective bidders for review at the U.S. Army Engineer District, St. Paul, MN.

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-- End of Section Table of Contents --

SECTION 01140

WORK RESTRICTIONS  
05/01

PART 1 GENERAL

1.1 MEASUREMENT AND PAYMENT

The Contractor shall be responsible for the work of this section, without any direct compensation being made other than the payment received for contract items.

1.2 GROUNDS AND ROADWAYS

1.2.1 Staging Area

The Contractor will be responsible for providing their own staging area.

1.3 BLASTING

Blasting will not be permitted.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 EXISTING UTILITIES

3.1.1 General

The Contractor shall coordinate all utility relocation requirements and make payment to the utility companies for all services, fees, and permits required to relocate and reestablish service. The Contractor shall be responsible for all costs related to protecting existing utilities.

3.1.2 Buried Utilities

The approximate locations of known existing buried utilities are shown on the drawings to the extent of available information at the time the drawings were prepared. (In general, no service connections are shown.) Prior to commencing excavation, the Contractor shall accurately locate all such installations. In the event the Contractor damages any existing utility lines, report thereof shall be made immediately to the Contracting Officer. Repair of damaged utilities shall be in accordance with CLAUSE 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS.

3.1.3 Interruption of Services

Utility services shall not be interrupted except for brief periods to facilitate cut-ins. The Contractor shall provide temporary service and shall relocate existing utilities as required to construct the work shown and insure uninterrupted service. If interruption of services is

unavoidable, the Contractor shall request approval in writing at least 30 calendar days prior to the proposed interruption. This submittal shall fully describe all details of proposed interruption and the reasons why alternatives are not feasible. The Contractor shall further coordinate with the owner of the utility and notify affected consumers at least 10 calendar days in advance of interruption of services. The Contracting Officer will not in general approve proposals which require interruption of services for more than 4 continuous hours.

#### 3.1.4 Minnesota One Call Excavation Notice System

For contract work performed within the State of Minnesota, the Contractor shall meet the requirements of Minnesota Statutes, Chapter 216D "One Call Excavation Notice System." The Gopher State One Call notification center telephone numbers are:

Metro area	(651) 454-0002
Outstate	(800) 252-1166

#### 3.1.5 Wisconsin Diggers Hotline

For contract work performed within the State of Wisconsin, the Contractor shall meet the requirements of the Wisconsin Statute 182.0175 "Damage to Transmission Facilities. The Wisconsin Diggers Hotline notification center telephone numbers are:

Hotline	800-242-8511
Main Office	414-259-0676

### 3.2 FLOATING PLANT

#### 3.2.1 Equipment and Personnel

Floating plant and personnel shall comply with the applicable U.S. Coast Guard regulations and licensing requirements. Floating plant equipment shall meet the applicable requirements of 46 CFR Chapter 1 Subchapter E and 46 CFR 44.05-10.

#### 3.2.2 Navigable Waters

Floating vessels operating on the Mississippi River and its tributaries must be operated in accordance with 33 CFR 207.3, "Ohio River, Mississippi River above Cairo, Ill., and their tributaries; use, administration, and navigation."

#### 3.2.3 Sewage and Bilge Water Disposal

The Contractor's methods for disposal of sanitary sewage, and bilge water accumulated aboard floating plant, shall meet applicable local, State, and Federal requirements.

### 3.3 BALD EAGLE NESTING WORK RESTRICTIONS

In 2004, it was discovered that a bald eagle was nesting in Spring Lake. Bald eagle nesting activities may occur at the site between approximately 01 March and 01 July. No work is allowed within 1/4 mile of the nest during that period, if eagle nesting activities occur at the site. The US Fish & Wildlife Service will determine if nesting activities are occurring in early March. If nesting activities occur, the US Fish & Wildlife

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Service will determine when nesting activities are over and work can begin within the restricted area. The approximate location of the eagle's nest and the 1/4 mile no work zone are shown on the drawings. If the eagles nest restrictions are enforced and result in a delay to critical contractor activities, the government will issue a modification in accordance with CONTRACT CLAUSE 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION).

-- End of Section --

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PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION (Not Applicable)

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MEASUREMENT AND PAYMENT  
01/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)

NIST HB 44	(1997) NIST Handbook 44: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices
------------	--

1.2 COMPENSATION

The payment provided for in the contract shall constitute full compensation for furnishing all materials and for performing all work under the contract in a complete and acceptable manner. The contract work shall include providing plant, equipment, tools, supplies, labor, supervision, incidental materials, quality control, environmental protection, and meeting safety requirements, and for performing all work required for which separate payment is not otherwise provided. Compensation for all work shown, specified, or essential to completion of the project (whether or not the specific material or operation is indicated) shall be included on the bidding schedule. The payment provided for in the contract includes compensation for all risk, loss, damage, and expense arising out of the nature of the work or its prosecution, subject to conditions of the contract. Payment for each contract line item will constitute full compensation for furnishing the materials and constructing the work complete in place as specified.

1.3 APPROVAL OF MATERIALS OR ALTERNATES

Requests for approval of materials and products, or substitutes thereof, will not be considered prior to award of the contract.

1.4 QUANTITY SURVEYS

The Contractor shall provide quantity surveys for bulk materials measured by volume or weight, unless an alternate method of measurement is specified. Quantity surveys are specified in Section 01720 CONTRACTOR SURVEYS.

1.5 MEASUREMENT BY WEIGHT

Bulk materials paid for by weight will be measured by weighing each truck

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load on an approved scale before being placed in the work. Scales shall be of sufficient length to permit simultaneous weighing of all axle loads and shall be sensitive to a change in load of 0.2 percent throughout the range of the scale. The scale's accuracy shall conform to the applicable requirements of NIST HB 44 and shall be certified by a scale servicing company or by an inspector of the State Inspection Bureau. Each load shall be accompanied by a delivery ticket certified by the weighmaster. Delivery tickets shall be collected by the Contractor, and copies thereof shall be furnished to the Contracting Officer. As a minimum, each ticket shall contain the following information:

- (1) Date and time.
- (2) Vehicle number.
- (3) Gross weight.
- (4) Vehicle tare weight.
- (5) Net weight.
- (6) Job total for material weighed.
- (7) Signature of weighmaster.

### 1.6 MEASUREMENT UNITS

When materials are measured in units other than the measurement units specified as the basis of payment, the measured quantities shall be converted to the specified unit of measure. Factors for conversions from one basis or unit of measurement to another shall be approved by the Contracting Officer.

### 1.7 UNIT PRICES

Payment items for the work of this contract are listed in the BIDDING SCHEDULE and described below. The payment items provided for on the bidding schedule embody the majority of the work; but the work descriptions provided below do not specifically discuss all incidental work required to complete the contract work.

### 1.8 BASIC ITEMS

#### 1.8.1 Mobilization and Demobilization for Basic Items

Compensation for physical move of equipment and plant to the project site, move of equipment and plant off the site, construction of pipelines, and removal of pipelines shall be paid for under the contract line item for Mobilization and Demobilization in accordance with FAR 252.236-7004.

#### 1.8.2 Spring Lake Island Construction - Granular Fill

Granular fill for the Spring Lake Islands will be measured for payment by the cubic yard (CY) in place, within the neat lines as shown on the drawings. Granular fill material placed outside the required lines, grades and sections, including permitted tolerances, will not be measured for payment. Payment for granular fill for the Spring Lake Islands will include the cost for dredging granular material, placing the granular material and any surveys or testing.

#### 1.8.3 Spring Lake Island Construction - Random Fill

Random fill for the Spring Lake Islands will be measured for payment by the cubic yard (CY) in place, within the neat lines as shown on the drawings. Random fill material placed outside the required lines, grades and

sections, including permitted tolerances, will not be measured for payment.

Payment for random fill for the Spring Lake Islands will include the cost for dredging random material, placing the random material and any surveys or testing.

#### 1.8.4 Spring Lake Island Construction - Fine Fill

Fine fill for the Spring Lake Islands will be measured for payment by the cubic yard (CY) in place, within the neat lines and to the thicknesses shown on the drawings. Fine fill material placed outside the required lines, grades and sections, including permitted tolerances, will not be measured for payment. Payment for fine fill for the Spring Lake Islands will include the cost for dredging fine material from the designated mandatory fines borrow area and placing the fine material and any surveys or testing.

#### 1.8.5 Spring Lake Island Construction - Sand Berms

Sand Berms for the Spring Lake Islands will be measured for payment by the cubic yard (CY) in place, within the neat lines as shown on the drawings. Material for the sand berms placed outside the required lines, grades and sections, including permitted tolerances, will not be measured for payment.

Payment for the sand berms for the Spring Lake Islands will include the cost for dredging sand material and placing the sand berm material and any surveys or testing.

#### 1.8.6 Spring Lake Island Rock Mounds

Payment will be by the ton (TN)(2,000 pounds avoirdupois) of material acceptably placed within the tolerances specified. Price(s) and payment(s) will be made at the contract unit price and will constitute full compensation for furnishing all plant, labor, materials and equipment and constructing the work complete in place as specified. No separate payment will be made for stockpiling materials.

#### 1.8.7 Spring Lake Island Rock Groins

Payment will be by the ton (TN)(2,000 pounds avoirdupois) of material acceptably placed within the tolerances specified. Price(s) and payment(s) will be made at the contract unit price and will constitute full compensation for furnishing all plant, labor, materials and equipment and constructing the work complete in place as specified. No separate payment will be made for stockpiling materials.

#### 1.8.8 Spring Lake Island Rock Vanes

Payment will be by the ton (TN)(2,000 pounds avoirdupois) of material acceptably placed within the tolerances specified. Price(s) and payment(s) will be made at the contract unit price and will constitute full compensation for furnishing all plant, labor, materials and equipment and constructing the work complete in place as specified. No separate payment will be made for stockpiling materials.

#### 1.8.9 Spring Lake Island Riprap Bank Protection

Payment will be by the ton (TN)(2,000 pounds avoirdupois) of material acceptably placed within the tolerances specified. Price(s) and payment(s) will be made at the contract unit price and will constitute full compensation for furnishing all plant, labor, materials and equipment and

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constructing the work complete in place as specified. No separate payment will be made for stockpiling materials.

### 1.8.10 Spring Lake Island Turf - Seed Mix 1

Turfing using Seed Mix 1 will be measured for payment by the acre (AC) in place. The area measured for payment will be limited to the areas designated for seeding as shown on the drawings. The work shall include soil amendments, placement of seed and mulch, and care of turf. Payment will be made at the contract unit price and will constitute full compensation for furnishing the materials and constructing the work complete in place as specified.

### 1.8.11 Spring Lake Island Turf - Seed Mix 2

Turfing using Seed Mix 2 will be measured for payment by the acre (AC) in place. The area measured for payment will be limited to the areas designated for seeding as shown on the drawings. The work shall include soil amendments, placement of seed and mulch, and care of turf. Payment will be made at the contract unit price and will constitute full compensation for furnishing the materials and constructing the work complete in place as specified.

### 1.8.12 Spring Lake Island Plantings - Willows

Planting of Willows on Spring Lake Islands will not be measured for payment. Payment will be made on a lump sum (LS) basis at the contract price and will constitute full compensation for furnishing, transporting, installing, establishment, maintenance, replacement/repair of unacceptable planting work and other incidental work necessary to complete the work as shown on the drawings.

### 1.8.13 Wildlife Loafing Structure - Type 1

Wildlife Loafing Structures will be measured for payment by each unit installed. Payment will be made at the contract unit price and will constitute full compensation for picking up Government furnished trees, transporting, installing and other incidental work necessary to complete the work as shown on the drawings.

### 1.8.14 Wildlife Loafing Structure - Type 2

Wildlife Loafing Structures will be measured for payment by each unit installed. Payment will be made at the contract unit price and will constitute full compensation for picking up Government furnished trees, transporting, installing, placement of geogrid, placement of Government furnished riprap and other incidental work necessary to complete the work as shown on the drawings.

### 1.8.15 Bonds for Basic Items

Bonds for the basic items will be paid for on a lump sum basis (LS) in accordance with FAR 52.232-5.

## 1.9 OPTIONAL ITEMS

### 1.9.1 Mobilization and Demobilization for Optional Items

Compensation for physical move of equipment and plant from the Spring Lake

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Islands project site to the optional channel dredging site, construction of pipelines, and removal of pipelines shall be paid for under the contract line item for Mobilization and Demobilization in accordance with FAR 252.236-7004.

### 1.9.2 Optional Channel Dredging

There are optional items for channel dredging the Minneiska Dredge Cut and the Mt. Vernon Dredge Cut in the bidding documents. The Government has the exclusive option to exercise the optional portions of the contract. If exercised when the dredge and pipeline are substantially operational at the site, the Contractor shall be prepared to commence the option work within 7 days. If the contractor uses the same plant, the option work may interrupt the Spring Lake Island construction. Costs to move between excavation in Spring Lake and the channel cuts, or mobilization costs for second plant or additional plant, shall not be measured for separate payment and costs therefore shall be included in the bid item to which the work pertains.

#### 1.9.2.1 Project Depth and Layout

The elevation of clear swept channel to be acquired will be determined by the Government at the time that pre-dredge surveys are completed. A project depth measured in feet below Low Control Pool (LCP) will be supplied to the Contractor for control of grades. Typical project depth for past dredging programs in the area has been 11, 12 or 13 feet below LCP. Final cut layout will be adjusted to provide the quantity required for the construction of Island E3.

#### 1.9.2.2 Basis of Payment

The material removed will be measured by cubic yard (CY) in place, by means of soundings taken before dredging. The payment quantity will be calculated as the volume of dredged material above the project depth within the defined cut area, including side slopes as defined herein. Payment under this item shall include all costs for dredging and satisfactory placement of material as the granular base material for the optional island E3. No separate payment will be made for movement of buoys, interruptions due to river traffic, layout and surveys, or other incidental work specified.

#### 1.9.2.3 Measurement

The payment quantity will be computed by the Government. The Corps of Engineers will take pre-dredge soundings for quantity determination and provide them to the Contractor at least 48 hours prior to the date dredging will begin. Unless the Contractor is directed to dredge under imminent closure or emergency closure conditions, the Contractor will notify the Contracting Officer at least 7 calendar days prior to the intended dredging date. These pre-dredge soundings will be by channel sweep method or by cross section taken at a maximum interval of 50 feet. Soundings will extend a minimum of 200 feet upstream and downstream of the cut. Soundings will be taken by lead line or sonic methods, or both, as determined by the Government; results of soundings by either or both methods will be the basis for payment. The Contractor has the option of being present when such soundings are made. Channel depths on the drawings represent existing conditions based on current available information, but will be verified and corrected by soundings taken before dredging in each locality.

The Contractor shall provide the Government with a minimum of 48 hours

notice prior to completing work at each dredging site. Post-dredging soundings will be made by the Government within 48 hours after completion of dredging.

#### 1.9.2.4 Project Depth

In order to allow for the inaccuracies of the dredging process, the Contractor will be allowed a tolerance of 0.5 feet above project depth in isolated scattered areas, providing the total area of the under-excavated portions does not exceed 10 percent of the total dredge cut area, and providing the average depth of the dredge cut is equal to or greater than the specified project depth. In the event the post-dredge soundings show the contractor has not met the contract requirements, the Government may require the Contractor to complete the work with no additional compensation for mobilization. If the Government accepts the work as completed, the amount of material not dredged will be deducted from the payment quantity.

#### 1.9.2.5 Disputes

In the event the Contractor disputes the Government's soundings, the Contractor shall indicate so in writing to the Contracting Officer within 24 hours after receiving the Government's data. It shall be the Contractor's responsibility to document any inaccuracy.

#### 1.9.2.6 Side Slopes

Dredging on side slopes shall follow, as closely as practicable, the lines indicated or specified. To account for sloughing which occurs subsequent to dredging at the edge of cuts, quantity for payment will include a one vertical on two horizontal neat line drawn away from the cut beginning at the intersection of the edge of cut with the project depth neat line and extending to the existing river bottom.

#### 1.9.2.7 Overdepth Dredging

Some over-depth dredging to cover inaccuracies of the dredging process is necessary to attain full project depth. Over depth dredging will not be measured for payment.

#### 1.9.3 Island E3 Construction - Fine Fill

Fine fill for the Island E3 will be measured for payment by the cubic yard (CY) in place, within the neat lines and to the thicknesses shown on the drawings. Fine fill material placed outside the required lines, grades and sections, including permitted tolerances, will not be measured for payment.

Payment for fine fill for the Island E3 will include the cost for dredging fine material from the designated mandatory fines borrow area and placing the fine material.

#### 1.9.4 Island E3 Rock Groins

Payment will be by the ton (TN)(2,000 pounds avoirdupois) of material acceptably placed within the tolerances specified. Price(s) and payment(s) will be made at the contract unit price and will constitute full compensation for furnishing all plant, labor, materials and equipment and constructing the work complete in place as specified. No separate payment will be made for stockpiling materials.

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### 1.9.5 Island E3 Riprap Bank Protection

Payment will be by the ton (TN)(2,000 pounds avoirdupois) of material acceptably placed within the tolerances specified. Price(s) and payment(s) will be made at the contract unit price and will constitute full compensation for furnishing all plant, labor, materials and equipment and constructing the work complete in place as specified. No separate payment will be made for stockpiling materials.

### 1.9.6 Island E3 Turf - Seed Mix 1

Turfing on Island E3 using Seed Mix 1 will be measured for payment by the acre (AC) in place. The area measured for payment will be limited to the areas designated for seeding as shown on the drawings. The work shall include soil amendments, placement of seed and mulch, and care of turf. Payment will be made at the contract unit price and will constitute full compensation for furnishing the materials and constructing the work complete in place as specified.

### 1.9.7 Island E3 Plantings - Willows

Planting of Willows on Island E3 will not be measured for payment. Payment will be made on a lump sum (LS) basis at the contract price and will constitute full compensation for furnishing, transporting, installing, establishment, maintenance, replacement/repair of unacceptable planting work and other incidental work necessary to complete the work as shown on the drawings.

### 1.9.8 Bonds for Optional Items

Bonds for the optional items will be paid for on a lump sum basis (LS) in accordance with FAR 52.232-5.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION (Not Applicable)

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08/01

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SECTION 01312

QUALITY CONTROL SYSTEM (QCS)  
08/01

PART 1 GENERAL

1.1 GENERAL

The Government will use the Resident Management System for Windows (RMS) to assist in its monitoring and administration of this contract. The Contractor shall use the Government-furnished Construction Contractor Module of RMS, referred to as QCS, to record, maintain, and submit various information throughout the contract period. The Contractor module, user manuals, updates, and training information can be downloaded from the RMS web site. This joint Government-Contractor use of RMS and QCS will facilitate electronic exchange of information and overall management of the contract. QCS provides the means for the Contractor to input, track, and electronically share information with the Government in the following areas:

- Administration
- Finances
- Quality Control
- Submittal Monitoring
- Scheduling
- Import/Export of Data

For ease and speed of communications, both Government and Contractor will, to the maximum extent feasible, exchange correspondence and other documents in electronic format.

Correspondence, pay requests and other documents comprising the official contract record shall also be provided in paper format, with signatures and dates where necessary. Paper documents will govern, in the event of discrepancy with the electronic version.

Particular attention is directed to other clauses which have a direct relationship to the reporting to be accomplished through QCS:

- 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS,
- 52.232-5 PAYMENTS UNDER FIRM FIXED PRICE CONSTRUCTION CONTRACTS,
- Section 01330 SUBMITTAL PROCEDURES,
- Section 01451 CONTRACTOR QUALITY CONTROL

There is no separate payment for establishing and maintaining the QCS database; all costs associated therewith shall be included in the contract pricing for the work.

1.2 QCS SOFTWARE

QCS is a Windows-based program that can be run on a stand-alone personal computer or on a network. The Government will make available the QCS software to the Contractor after award of the construction contract. Prior to the Pre-Construction Conference, the Contractor shall be responsible to download, install and use the latest version of the QCS software from the

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Government's RMS Internet Website. Upon specific justification and request by the Contractor, the Government can provide QCS on 3-1/2 inch high-density diskettes or CD-ROM. Any program updates of QCS will be made available to the Contractor via the Government RMS Website as they become available.

### 1.3 SYSTEM REQUIREMENTS

The following listed hardware and software is the minimum system configuration that the Contractor shall have to run QCS:

#### **Hardware**

IBM-compatible PC with 500 MHz Pentium or higher processor  
128+ MB RAM for workstation / 256+ MB RAM for server  
1 GB hard drive disk space for sole use by the QCS system  
3 1/2 inch high-density floppy drive  
Compact disk (CD) Reader, 8x speed or higher  
SVGA or higher resolution monitor (1024 x 768, 256 colors)  
Mouse or other pointing device  
Windows compatible printer (Laser printer must have 4+ MB of RAM)  
Connection to the Internet, minimum 56 BPS

#### **Software**

MS Windows 98, ME, NT, or 2000  
Word Processing software compatible with MS Word 97 or newer  
Latest version of : Netscape Navigator, Microsoft Internet Explorer, or other browser that supports HTML 4.0 or higher  
Electronic mail (E-mail), MAPI compatible  
Virus protection software that is regularly upgraded with all issued manufacturer's updates

### 1.4 RELATED INFORMATION

#### 1.4.1 QCS User Guide

After contract award, the Contractor shall download instructions for the installation and use of QCS from the Government RMS Internet Website; the Contractor can obtain the current address from the Government. In case of justifiable difficulties, the Government will provide the Contractor with a CD-ROM containing these instructions.

#### 1.4.2 Contractor Quality Control(CQC) Training

The use of QCS will be discussed at the Contractor's CQC System Manager

training classes (Reference Section 01451 CONTRACTOR QUALITY CONTROL, PARAGRAPH: QUALITY CONTROL ORGANIZATION).

#### 1.5 CONTRACT DATABASE

Prior to the pre-construction conference, the Government shall provide the Contractor with basic contract award data to use for QCS. The Government will provide data updates to the Contractor as needed. These updates will generally consist of submittal reviews, correspondence status, QA comments, and other administrative and QA data.

#### 1.6 DATABASE MAINTENANCE

The Contractor shall establish, maintain, and update data for the contract in the QCS database throughout the duration of the contract. The Contractor shall establish and maintain the QCS database at the Contractor's site office. Data updates to the Government shall be submitted with file attachments, e.g., daily reports, schedule updates, payment requests. The QCS database typically shall include current data on the following items:

##### 1.6.1 Administration

###### 1.6.1.1 Contractor Information

The database shall contain the Contractor's name, address, telephone numbers, and management staff. The Contractor shall deliver Contractor administrative data in electronic format prior to the preconstruction conference.

###### 1.6.1.2 Subcontractor Information

The database shall contain the name, trade, address, phone numbers, and other required information for all subcontractors. A subcontractor must be listed separately for each trade to be performed. Each subcontractor/trade shall be assigned a unique Responsibility Code, provided in QCS. The Contractor shall deliver subcontractor administrative data in electronic format prior to the preconstruction conference.

###### 1.6.1.3 Correspondence

All Contractor correspondence to the Government shall be identified with a serial number. Correspondence initiated by the Contractor's site office shall be prefixed with "S". Letters initiated by the Contractor's home (main) office shall be prefixed with "H". Letters shall be numbered starting from 0001. (e.g., H-0001 or S-0001). The Government's letters to the Contractor will be prefixed with "C".

###### 1.6.1.4 Equipment

The Contractor's QCS database shall contain a current list of equipment planned for use or being used on the jobsite, including the most recent and planned equipment inspection dates.

###### 1.6.1.5 Management Reporting

QCS includes a number of reports that Contractor management can use to track the status of the project. The value of these reports is reflective of the quality of the data input, and is maintained in the various sections

of QCS. Among these reports are: Progress Payment Request worksheet, QA/QC comments, Submittal Register Status, Three-Phase Inspection checklists.

#### 1.6.2 Finances

##### 1.6.2.1 Pay Activity Data

The QCS database shall include a list of pay activities that the Contractor shall develop in conjunction with the construction schedule. The sum of all pay activities shall be equal to the total contract amount, including modifications. Pay activities shall be grouped by Contract Line Item Number (CLIN), and the sum of the activities shall equal the amount of each CLIN. The total of all CLINs equals the Contract Amount.

##### 1.6.2.2 Payment Requests

All progress payment requests shall be prepared using QCS. The Contractor shall complete the payment request worksheet and include it with the payment request. The work completed under the contract, measured as percent or as specific quantities, shall be updated at least monthly. After the update, the Contractor shall generate a payment request report using QCS. The Contractor shall submit the payment requests with supporting data with file attachment(s). A signed paper copy of the approved payment request is also required, which shall govern in the event of discrepancy with the electronic version.

#### 1.6.3 Quality Control (QC)

QCS provides a means to track implementation of the 3-phase QC System, prepare daily reports, identify and track deficiencies, document progress of work, and support other contractor QC requirements. The Contractor shall maintain this data on a daily basis. Entered data will automatically output to the QCS generated daily report. The Contractor shall provide the Government a Contractor Quality Control (CQC) Plan within the time required in Section 01451 CONTRACTOR QUALITY CONTROL. Within seven calendar days of Government acceptance, the Contractor shall submit a data diskette or CD-ROM reflecting the information contained in the accepted CQC Plan: schedule, pay activities, features of work, submittal register, QC requirements, and equipment list.

##### 1.6.3.1 Daily Contractor Quality Control (CQC) Reports.

QCS includes the means to produce the Daily CQC Report. The Contractor may use other formats to record basic QC data. However, the Daily CQC Report generated by QCS shall be the Contractor's official report. Data from any supplemental reports by the Contractor shall be summarized and consolidated onto the QCS-generated Daily CQC Report. Daily CQC Reports shall be submitted as required by Section 01451 CONTRACTOR QUALITY CONTROL. Reports shall be submitted electronically to the Government using E-mail or diskette within 24 hours after the date covered by the report. Use of either mode of submittal shall be coordinated with the Government representative. The Contractor shall also provide the Government a signed, printed copy of the daily CQC report.

##### 1.6.3.2 Deficiency Tracking.

The Contractor shall use QCS to track deficiencies. Deficiencies identified by the Contractor will be numerically tracked using QC punch list items. The Contractor shall maintain a current log of its QC punch

list items in the QCS database. The Government will log the deficiencies it has identified using its QA punch list items. The Government's QA punch list items will be included in its export file to the Contractor. The Contractor shall regularly update the correction status of both QC and QA punch list items.

#### 1.6.3.3 Three-Phase Control Meetings

The Contractor shall maintain scheduled and actual dates and times of preparatory and initial control meetings in QCS.

#### 1.6.3.4 Accident/Safety Tracking.

The Government will issue safety comments, directions, or guidance whenever safety deficiencies are observed. The Government's safety comments will be included in its export file to the Contractor. The Contractor shall regularly update the correction status of the safety comments. In addition, the Contractor shall utilize QCS to advise the Government of any accidents occurring on the jobsite. This brief supplemental entry is not to be considered as a substitute for completion of mandatory reports, e.g., ENG Form 3394 and OSHA Form 300.

#### 1.6.3.5 Features of Work

The Contractor shall include a complete list of the features of work in the QCS database. A feature of work may be associated with multiple pay activities. However, each pay activity (see subparagraph "Pay Activity Data" of paragraph "Finances") will only be linked to a single feature of work.

#### 1.6.3.6 QC Requirements

The Contractor shall develop and maintain a complete list of QC testing, transferred and installed property, and user training requirements in QCS. The Contractor shall update all data on these QC requirements as work progresses, and shall promptly provide this information to the Government via QCS.

#### 1.6.4 Submittal Management

The Government will provide the initial submittal register, ENG Form 4288, SUBMITTAL REGISTER, in electronic format. The listing of submittals is general and not all-inclusive. The contractor shall review the contract documents and incorporate additional required submittals, complete the columns for contractor schedule dates and submit the updated register to the Contracting Officer for approval within 7 calendar days after Notice to Proceed. The approved submittal register will be used to manage submittals throughout the life of the contract. The submittal register and construction schedule shall be coordinated. Dates on which submittals are received and returned by the Government will be included in its export file to the Contractor. The Contractor shall use QCS to track and transmit all submittals. ENG Form 4025, submittal transmittal form, and the submittal register update, ENG Form 4288, shall be produced using QCS. RMS will be used to update, store and exchange submittal registers and transmittals, but will not be used for storage of actual submittals.

#### 1.6.5 Schedule

The Contractor shall develop a construction schedule consisting of pay

activities, in accordance with Contract Clause 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS". This schedule shall be input and maintained in the RMS-QC database. The updated schedule data shall be included with each pay request submitted by the Contractor.

#### 1.6.6 Import/Export of Data

QCS includes the ability to export Contractor data to the Government and to import submittal register and other Government-provided data, and schedule data.

#### 1.7 IMPLEMENTATION

Contractor use of QCS as described in the preceding paragraphs is mandatory. The Contractor shall ensure that sufficient resources are available to maintain its QCS database, and to provide the Government with regular database updates. QCS shall be an integral part of the Contractor's management of quality control.

#### 1.8 DATA SUBMISSION

The Contractor shall submit updates, payment requests, correspondence and other data in the format directed by the Contracting Officer. Submission formats available include diskettes, CD-ROM, or E-mail. Generally, E-mail is preferred for submissions from the Contractor's home office, and diskette or CD-ROM is preferred for submissions from the contractor's field office.

Data on the disks or CDs shall be exported using the QCS built-in export function. If used, diskettes and CD-ROMs will be submitted in accordance with the following:

##### 1.8.1 File Medium

The Contractor shall submit required data on 3-1/2 inch double-sided high-density diskettes formatted to hold 1.44 MB of data, capable of running under Microsoft Windows 95 or newer. Alternatively, CD-ROMs may be used. They shall conform to industry standards used in the United States. All data shall be provided in English.

##### 1.8.2 Disk or CD-ROM Labels

The Contractor shall affix a permanent exterior label to each diskette and CD-ROM submitted. The label shall indicate in English, the QCS file name, full contract number, contract name, project location, data date, name and telephone number of person responsible for the data.

##### 1.8.3 File Names

The Government will provide the file names to be used by the Contractor with the QCS software.

#### 1.9 MONTHLY COORDINATION MEETING

The Contractor shall update the QCS database each workday. At least monthly, the Contractor shall generate and submit an export file to the Government with schedule update and progress payment request. As required in Contract Clause "Payments", at least one week prior to submittal, the Contractor shall meet with the Government representative to review the

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planned progress payment data submission for errors and omissions. The Contractor shall make all required corrections prior to Government acceptance of the export file and progress payment request. Payment requests accompanied by incomplete or incorrect data submittals will be returned. The Government will not process progress payments until an acceptable QCS export file is received.

### 1.10 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the requirements of this specification. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, shall be deemed sufficient for the purpose of notification.

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SECTION 01330

SUBMITTAL PROCEDURES  
**01/02**

PART 1 GENERAL

1.1 SUBMITTAL IDENTIFICATION

Submittals required are identified by SD numbers and titles as follows:

- SD-01 Preconstruction Submittals
- SD-02 Shop Drawings
- SD-03 Product Data
- SD-04 Samples
- SD-05 Design Data
- SD-06 Test Reports
- SD-07 Certificates
- SD-08 Manufacturer's Instructions
- SD-09 Manufacturer's Field Reports
- SD-10 Operation and Maintenance Data
- SD-11 Closeout Submittals

1.2 SUBMITTAL CLASSIFICATION

Submittals are classified as follows:

1.2.1 Government Approved

Governmental approval is required for extensions of design, critical materials, deviations, equipment whose compatibility with the entire system must be checked, and other items as designated by the Contracting Officer. Within the terms of the Contract Clause entitled "Specifications and Drawings for Construction," government approved submittals are considered to be "shop drawings."

1.2.2 Information Only

All submittals not requiring Government approval will be for information only. They are not considered to be "shop drawings" within the terms of the Contract Clause referred to above.

1.3 APPROVED SUBMITTALS

The Contracting Officer's approval of submittals shall not be construed as a complete check, but will indicate only that the general method of

construction, materials, detailing and other information are satisfactory. Approval will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for dimensions, the design of adequate connections and details, and the satisfactory construction of all work. After submittals have been approved by the Contracting Officer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

#### 1.4 DISAPPROVED SUBMITTALS

The Contractor shall make all corrections required by the Contracting Officer and promptly furnish a corrected submittal in the form and number of copies specified for the initial submittal. If the Contractor considers any correction indicated on the submittals to constitute a change to the contract, a notice in accordance with the Contract Clause "Changes" shall be given promptly to the Contracting Officer.

#### 1.5 WITHHOLDING OF PAYMENT

Payment for materials incorporated in the work will not be made if required approvals have not been obtained.

#### 1.6 MEASUREMENT AND PAYMENT

The work of this section will not be measured for payment. The Contractor shall be responsible for the work of this section, without any direct compensation being made other than the payment received for contract items.

### PART 2 PRODUCTS (Not Applicable)

### PART 3 EXECUTION

#### 3.1 GENERAL

The Contractor shall make submittals as required by the specifications. The Contracting Officer may request submittals in addition to those specified when deemed necessary to adequately describe the work covered in the respective sections. Units of weights and measures used on all submittals shall be the same as those used in the contract drawings. Each submittal shall be complete and in sufficient detail to allow ready determination of compliance with contract requirements. Prior to submittal, all items shall be checked and approved by the Contractor's Quality Control (CQC) System Manager and each item shall be stamped, signed, and dated by the CQC System Manager indicating action taken. Proposed deviations from the contract requirements shall be clearly identified. Submittals shall include items such as: Contractor's, manufacturer's, or fabricator's drawings; descriptive literature including (but not limited to) catalog cuts, diagrams, operating charts or curves; test reports; test cylinders; samples; O&M manuals (including parts list); certifications; warranties; and other such required submittals. Submittals requiring Government approval shall be scheduled and made prior to the acquisition of the material or equipment covered thereby. Samples remaining upon completion of the work shall be picked up and disposed in accordance with manufacturer's Material Safety Data Sheets (MSDS) and in compliance with existing laws and regulations.

### 3.2 SUBMITTAL REGISTER (ENG FORM 4288)

At the end of this section is a submittal register (ENG Form 4288) showing items of equipment and materials for which submittals are required by the specifications; this list may not be all inclusive and additional submittals may be required. Columns "c" through "f" have been completed by the Government; the Contractor shall complete columns "a" and "g" through "i" and submit the forms to the Contracting Officer for approval within 7 calendar days after Notice to Proceed. The Contractor shall keep the submittal register up-to-date and shall submit it to the Government together with the monthly payment request. The approved submittal register will become the scheduling document and will be used to control submittals throughout the life of the contract. The submittal register and the progress schedules shall be coordinated.

### 3.3 SCHEDULING

Submittals covering component items forming a system or items that are interrelated shall be scheduled to be coordinated and submitted concurrently. Certifications to be submitted with the pertinent drawings shall be so scheduled. Adequate time (a minimum of 30 calendar days exclusive of mailing time) shall be allowed and shown on the register for review and approval. No delay damages or time extensions will be allowed for time lost in late submittals. The submittal register shall provide for a reasonable timely distribution of shop drawings as they are prepared (particularly within a specific discipline, i.e.: structural, mechanical).

### 3.4 TRANSMITTAL FORM (ENG FORM 4025)

The sample transmittal form (ENG Form 4025) attached to this section shall be used for submitting both Government approved and information only submittals in accordance with the instructions on the reverse side of the form. These forms are included in the CQS software. Hardcopies will be furnished to the Contractor if the CQS software is not used on this contract. This form shall be properly completed by filling out all the heading blank spaces and identifying each item submitted. Special care shall be exercised to ensure proper listing of the specification paragraph and/or sheet number of the contract drawings pertinent to the data submitted for each item.

### 3.5 SUBMITTAL PROCEDURE

#### 3.5.1 Submittal Copies

The Contractor shall submit 6 hardcopies of each submittal (both government approved and for information only), or 1 hardcopy and 1 electronic copy, unless otherwise indicated. Each transmittal shall address only one submittal item. Transmittals returned for resubmission shall be resubmitted in their entirety. When approved by the Contracting Officer, routine test reports and delivery tickets may be submitted with daily quality control reports in place of following submittal procedures under this section.

#### 3.5.2 Schedule

Shop drawings shall be submitted with ample time to secure Government approval prior to the time the items covered thereby are to be delivered to the site. Additional time should be allowed for possible resubmittal. Materials fabricated or delivered without Government approval of the shop

drawing will be subject to rejection. All submittals shall be made prior to commencement of applicable work, and allow adequate time for government review acceptable to the Contracting Officer.

#### 3.5.3 Shop Drawings

Shop drawings shall be reproductions on high quality paper with clear legible print. Drawings shall generally be bordered a minimum of one inch and trimmed to neat lines. Shop drawing quality will be subject to approval. Each shop drawing, including catalog data, shall be identified with a title block including the name of the Contractor, contract number, name and location of project, and name of the item of work or structure to which the shop drawing applies. Catalog data, including specifications and full descriptive matter, may be submitted as shop drawings. Catalog data must be supplemented as necessary to include all pertinent data to verify conformance to the contract documents. When catalog data includes non applicable data, the applicable data shall be clearly indicated.

#### 3.5.4 Warranties

Any items that are submitted for review or approval of the Contracting officer should include a copy of the manufacturer's standard warranty if one is available.

#### 3.5.5 Deviations

For submittals which include proposed deviations requested by the Contractor, the column "variation" of ENG Form 4025 shall be checked. The Contractor shall set forth in writing the reason for any deviations and annotate such deviations on the submittal. The Government reserves the right to rescind inadvertent approval of submittals containing unnoted deviations.

#### 3.6 CONTROL OF SUBMITTALS

The Contractor shall carefully control its procurement operations to ensure that each individual submittal is made on or before the Contractor scheduled submittal date shown on the approved "Submittal Register."

#### 3.7 GOVERNMENT APPROVED SUBMITTALS

Upon completion of review of submittals requiring Government approval, the submittals will be identified as having received approval by being so stamped and dated. Five copies of the submittal will be retained by the Contracting Officer and 1 copy of the submittal will be returned to the Contractor.

#### 3.8 INFORMATION ONLY SUBMITTALS

Normally submittals for information only will not be returned. Approval of the Contracting Officer is not required on information only submittals. The Government reserves the right to require the Contractor to resubmit any item found not to comply with the contract. This does not relieve the Contractor from the obligation to furnish material conforming to the plans and specifications; will not prevent the Contracting Officer from requiring removal and replacement of nonconforming material incorporated in the work; and does not relieve the Contractor of the requirement to furnish samples for testing by the Government laboratory or for check testing by the Government in those instances where the technical specifications so

prescribe.

### 3.9 STAMPS

Stamps used by the Contractor on the submittal data to certify that the submittal meets contract requirements shall be similar to the following:

<p>CONTRACTOR</p> <p>(Firm Name)</p> <p>_____ Approved</p> <p>_____ Approved with corrections as noted on submittal data and/or attached sheet(s).</p> <p>SIGNATURE: _____</p> <p>TITLE: _____</p> <p>DATE: _____</p>
---

-- End of Section --



## INSTRUCTIONS

1. Section I will be initiated by the Contractor in the required number of copies.
2. Each transmittal shall be numbered consecutively in the space provided for "Transmittal No.". This number, in addition to the contract number, will form a serial number for identifying each submittal. For new submittals or resubmittals mark the appropriate box; on resubmittals, insert transmittal number of last submission as well as the new submittal number.
3. The "Item No." will be the same "Item No." as indicated on ENG FORM 4288-R for each entry on this form.
4. Submittals requiring expeditious handling will be submitted on a separate form.
5. Separate transmittal form will be used for submittals under separate sections of the specifications.
6. A check shall be placed in the "Variation" column when a submittal is not in accordance with the plans and specifications--also, a written statement to that effect shall be included in the space provided for "Remarks".
7. Form is self-transmittal, letter of transmittal is not required.
8. When a sample of material or Manufacturer's Certificate of Compliance is transmitted, indicate "Sample" or "Certificate" in column c, Section I.
9. U.S. Army Corps of Engineers approving authority will assign action codes as indicated below in space provided in Section I, column i to each item submitted. In addition they will ensure enclosures are indicated and attached to the form prior to return to the contractor. The Contractor will assign action codes as indicated below in Section I, column g, to each item submitted.

### THE FOLLOWING ACTION CODES ARE GIVEN TO ITEMS SUBMITTED

- |   |   |
|---|---|
| A -- Approved as submitted.   | E -- Disapproved (See attached).  |
| B -- Approved, except as noted on drawings.   | F -- Receipt acknowledged.  |
| C -- Approved, except as noted on drawings.<br>Refer to attached sheet resubmission required. | FX -- Receipt acknowledged, does not comply<br>as noted with contract requirements. |
| D -- Will be returned by separate correspondence.   | G -- Other ( <i>Specify</i> )   |

10. Approval of items does not relieve the contractor from complying with all the requirements of the contract plans and specifications.

# SUBMITTAL REGISTER

CONTRACT NO.

TITLE AND LOCATION SPRING LAKE ISLANDS EMP						CONTRACTOR											
ACTIVITY NO	TRANSMITTAL NO	SPEC SECT	DESCRIPTION ITEM SUBMITTED	PARAGRAPH	GOVT CLASSIFICATION OR REFERENCE NUMBER	CONTRACTOR: SCHEDULE DATES			CONTRACTOR ACTION		DATE FWD TO APPR AUTH/  DATE RCD FROM CONTR	APPROVING AUTHORITY				MAILED TO CONTR/  DATE RCD FRM APPR AUTH	REMARKS
						SUBMIT	APPROVAL NEEDED BY	MATERIAL NEEDED BY	ACTION CODE	DATE OF ACTION		DATE FWD TO OTHER REVIEWER	DATE RCD FROM OTH REVIEWER	ACTION CODE	DATE OF ACTION		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
		01355	SD-01 Preconstruction Submittals														
			Environmental Protection Plan	1.7	G ENV												
		01780	SD-11 Closeout Submittals														
			As-Built Drawings		G GEN												
		02323	SD-01 Preconstruction Submittals														
			Excavation Plan		G COR												
		02325	SD-01 Preconstruction Submittals														
			Dredging Plant														
			SD-02 Shop Drawings														
			Pipeline														
			SD-06 Test Reports														
			Daily Report Forms														
		02327	SD-01 Preconstruction Submittals														
			Placement Plan		G COR												
			Water Quality Plan		G COR												
		02388	SD-01 Preconstruction Submittals														
			Material Sources		G GT												
			SD-03 Product Data														
			Geogrid Data														
			SD-06 Test Reports														
			Gradation Test														
			SD-07 Certificates														
			Certified Weight Scale Tickets														
		02922	SD-03 Product Data														
			Manufacturer's Literature														
			SD-06 Test Reports														

CONTRACT NO.

CONTRACTOR
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SECTION 01355

ENVIRONMENTAL PROTECTION  
01/01

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

CODE OF FEDERAL REGULATIONS (CFR)

33 CFR 328	Definitions
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 262	Standards Applicable to Generators of Hazardous Waste
40 CFR 279	Standards for the Management of Used Oil
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 355	Emergency Planning and Notification
49 CFR 171 - 178	Hazardous Materials Regulations

ENGINEERING MANUALS (EM)

EM 385-1-1	(1996) U.S. Army Corps of Engineers Safety and Health Requirements Manual
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US ARMY CORPS OF ENGINEERS TECHNICAL REPORT

WETLAND MANUAL	Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1
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1.2 DEFINITIONS

1.2.1 Environmental Pollution and Damage

Environmental pollution and damage is the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally and/or historically.

#### 1.2.2 Environmental Protection

Environmental protection is the prevention/control of pollution and habitat disruption that may occur to the environment during construction. The control of environmental pollution and damage requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

#### 1.2.3 Contractor Generated Hazardous Waste

Contractor generated hazardous waste means materials that, if abandoned or disposed, may meet the definition of a hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction. Examples include, but are not limited to, excess paint thinners (e.g. methyl ethyl ketone, toluene etc.), waste thinners, excess paints, excess solvents, waste solvents, excess pesticides, and contaminated pesticide equipment rinse water.

#### 1.2.4 Land Application for Discharge Water

The term "Land Application" for discharge water implies that the Contractor shall discharge water at a rate which allows the water to percolate into the soil. No sheeting action, soil erosion, discharge into storm sewers, discharge into defined drainage areas, or discharge into the "waters of the United States" shall occur. Land Application shall be in compliance with all applicable Federal, State, and local laws and regulations.

#### 1.2.5 Pesticide

Pesticide is defined as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant or desiccant.

#### 1.2.6 Pests

The term "pests" means arthropods, birds, rodents, nematodes, fungi, bacteria, viruses, algae, snails, marine borers, snakes, weeds and other organisms (except for human or animal disease-causing organisms) that adversely affect readiness, military operations, or the well-being of personnel and animals; attack or damage real property, supplies, equipment, or vegetation; or are otherwise undesirable.

#### 1.2.7 Surface Discharge

The term "Surface Discharge" implies that the water is discharged with possible sheeting action and subsequent soil erosion may occur. Waters that are surface discharged may terminate in drainage ditches, storm sewers, creeks, and/or "waters of the United States" and would require a permit from the governing agency to discharge water.

#### 1.2.8 Waters of the United States

All waters which are under the jurisdiction of the Clean Water Act, as defined in 33 CFR 328.

#### 1.2.9 Wetlands

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. Official determination of whether or not an area is classified as a wetland must be done in accordance with the WETLAND MANUAL.

#### 1.3 GENERAL REQUIREMENTS

The Contractor shall minimize environmental pollution and damage that may occur as the result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of this contract. The Contractor shall be responsible for any delays resulting from failure to comply with environmental laws and regulations.

#### 1.4 SUBCONTRACTORS

The Contractor shall ensure compliance with this section by subcontractors.

#### 1.5 PAYMENT

No separate payment will be made for work covered under this section. The Contractor shall be responsible for payment of fees associated with environmental permits, application, and/or notices obtained by the Contractor. All costs associated with this section shall be included in the contract price. The Contractor shall be responsible for payment of all fines/fees for violation or non-compliance with Federal, State, regional and local laws and regulations.

#### 1.6 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Environmental Protection Plan; G,ENV

The environmental protection plan.

#### 1.7 ENVIRONMENTAL PROTECTION PLAN

Prior to commencing construction activities or delivery of materials to the site, the Contractor shall submit an Environmental Protection Plan for review and approval by the Contracting Officer. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential environmental issues which the Contractor must address during construction. Issues of concern shall be defined within the Environmental Protection Plan as outlined in this section. The Contractor shall address each topic at a level of detail commensurate with the environmental issue and required construction task(s). Topics or issues which are not identified in this section, but which the Contractor

considers necessary, shall be identified and discussed after those items formally identified in this section. Prior to submittal of the Environmental Protection Plan, the Contractor shall meet with the Contracting Officer for the purpose of discussing the implementation of the initial Environmental Protection Plan, possible subsequent additions and revisions to the plan including any reporting requirements, and methods for administration of the Contractor's Environmental Plans. The Environmental Protection Plan shall be current and maintained onsite by the Contractor.

#### 1.7.1 Compliance

No requirement in this Section shall be construed as relieving the Contractor of any applicable Federal, State, and local environmental protection laws and regulations. During construction, the Contractor shall be responsible for identifying, implementing, and submitting for approval any additional requirements to be included in the Environmental Protection Plan.

#### 1.7.2 Contents

The environmental protection plan shall include, but shall not be limited to, the following:

- a. Name(s) of person(s) within the Contractor's organization who is(are) responsible for ensuring adherence to the Environmental Protection Plan.
- b. Name(s) and qualifications of person(s) responsible for manifesting hazardous waste to be removed from the site, if applicable.
- c. Name(s) and qualifications of person(s) responsible for training the Contractor's environmental protection personnel.
- d. Description of the Contractor's environmental protection personnel training program.
- e. An erosion and sediment control plan which identifies the type and location of the erosion and sediment controls to be provided. The plan shall include monitoring and reporting requirements to assure that the control measures are in compliance with the erosion and sediment control plan, and Federal, State, and local laws and regulations. A Storm Water Pollution Prevention Plan (SWPPP) may be substituted for this plan.
- f. Drawings showing locations of proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials including methods to control runoff and to contain materials on the site.
- g. Traffic control plans including measures to reduce erosion of temporary roadbeds by construction traffic, especially during wet weather. Plan shall include measures to minimize the amount of mud transported onto paved public roads by vehicles or runoff.
- h. Work area plan showing the proposed activity in each portion of the area and identifying the areas of limited use or nonuse. Plan should include measures for marking the limits of use areas including methods for protection of features to be preserved within authorized work areas.

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- i. Drawing showing the location of borrow areas.
- j. The Spill Control plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by 40 CFR 68, 40 CFR 302, 40 CFR 355, and/or regulated under State or local laws and regulations. The Spill Control Plan supplements the requirements of EM 385-1-1. This plan shall include as a minimum:
  - 1. The name of the individual who will report any spills or hazardous substance releases and who will follow up with complete documentation. This individual shall immediately notify the Contracting Officer, and the local Fire Department for flammable materials, in addition to the legally required Federal, State, and local reporting channels (including the National Response Center 1-800-424-8802) if a reportable quantity is released to the environment. The plan shall contain a list of the required reporting channels and telephone numbers.
  - 2. The name and qualifications of the individual who will be responsible for implementing and supervising the containment and cleanup.
  - 3. Training requirements for Contractor's personnel and methods of accomplishing the training.
  - 4. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.
  - 5. The names and locations of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of an unforeseen spill emergency.
  - 6. The methods and procedures to be used for expeditious contaminant cleanup.
- k. A non-hazardous solid waste disposal plan identifying methods and locations for solid waste disposal including clearing debris. The plan shall include schedules for disposal. The Contractor shall identify any subcontractors responsible for the transportation and disposal of solid waste. Licenses or permits shall be submitted for solid waste disposal sites that are not a commercial operating facility. Evidence of the disposal facility's acceptance of the solid waste shall be attached to this plan during the construction.
- l. A recycling and solid waste minimization plan with a list of measures to reduce consumption of energy and natural resources. The plan shall detail the Contractor's actions to comply with and to participate in Federal, State, regional, and local government sponsored recycling programs to reduce the volume of solid waste at the source.
- m. An air pollution control plan detailing provisions to assure that dust, debris, materials, trash, etc., do not become air borne and travel off the project site.
- n. A contaminant prevention plan that: identifies potentially

hazardous substances to be used on the job site; identifies the intended actions to prevent introduction of such materials into the air, water, or ground; and details provisions for compliance with Federal, State, and local laws and regulations for storage and handling of these materials. In accordance with EM 385-1-1, a copy of the Material Safety Data Sheets (MSDS) and the maximum quantity of each hazardous material to be on site at any given time shall be included in the contaminant prevention plan. As new hazardous materials are brought on site or removed from the site, the plan shall be updated.

o. A waste water management plan that identifies the methods and procedures for management and/or discharge of waste waters which are directly derived from construction activities, such as concrete curing water, clean-up water, dewatering of ground water, disinfection water, hydrostatic test water, and water used in flushing of lines. If a settling/retention pond is required, the plan shall include the design of the pond including drawings, removal plan, and testing requirements for possible pollutants. If land application will be the method of disposal for the waste water, the plan shall include a sketch showing the location for land application along with a description of the pretreatment methods to be implemented. If surface discharge will be the method of disposal, a copy of the permit and associated documents shall be included as an attachment prior to discharging the waste water. If disposal is to a sanitary sewer, the plan shall include documentation that the Waste Water Treatment Plant Operator has approved the flow rate, volume, and type of discharge.

p. A historical, archaeological, cultural resources biological resources and wetlands plan that defines procedures for identifying and protecting historical, archaeological, cultural resources, biological resources and wetlands known to be on the project site: and/or identifies procedures to be followed if historical archaeological, cultural resources, biological resources and wetlands not previously known to be onsite or in the area are discovered during construction. The plan shall include methods to assure the protection of known or discovered resources and shall identify lines of communication between Contractor personnel and the Contracting Officer.

q. A pesticide treatment plan shall be included and updated, as information becomes available. The plan shall include: sequence of treatment, dates, times, locations, pesticide trade name, EPA registration numbers, authorized uses, chemical composition, formulation, original and applied concentration, application rates of active ingredient (e.g. pounds per acre), equipment used for application and calibration of equipment. The Contractor is responsible for Federal, State, regional and local pest management record keeping and reporting requirements.

### 1.7.3 Appendix

Copies of all environmental permits, permit application packages, approvals to construct, notifications, certifications, reports, and termination documents shall be attached, as an appendix, to the Environmental Protection Plan.

## 1.8 PROTECTION FEATURES

This paragraph supplements the Contract Clause 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS.

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Prior to start of any onsite construction activities, the Contractor and the Contracting Officer shall make a joint condition survey. Immediately following the survey, the Contractor shall prepare a brief report including a plan describing the features requiring protection under the provisions of the Contract Clauses, which are not specifically identified on the drawings as environmental features requiring protection along with the condition of trees, shrubs and grassed areas immediately adjacent to the site of work and adjacent to the Contractor's assigned storage area and access route(s), as applicable. This survey report shall be signed by both the Contractor and the Contracting Officer upon mutual agreement as to its accuracy and completeness. The Contractor shall protect those environmental features included in the survey report and any indicated on the drawings, regardless of interference which their preservation may cause to the Contractor's work under the contract.

### 1.9 ENVIRONMENTAL ASSESSMENT OF CONTRACT DEVIATIONS

Any deviations, requested by the Contractor, from the drawings, plans and specifications which may have an environmental impact will be subject to approval by the Contracting Officer and may require an extended review, processing, and approval time. The Contracting Officer reserves the right to disapprove alternate methods, even if they are more cost effective, if the Contracting Officer determines that the proposed alternate method will have an adverse environmental impact.

### 1.10 NOTIFICATION

The Contracting Officer will notify the Contractor in writing of any observed noncompliance with Federal, State or local environmental laws or regulations, permits, and other elements of the Contractor's Environmental Protection plan. The Contractor shall, after receipt of such notice, inform the Contracting Officer of the proposed corrective action and take such action when approved by the Contracting Officer. The Contracting Officer may issue an order stopping (suspending) all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or equitable adjustments allowed to the Contractor for any such suspensions. This is in addition to any other actions the Contracting Officer may take under the contract, or in accordance with the Federal Acquisition Regulation or Federal Law. The failure of the Contracting Officer to notify the Contractor of any noncompliance with Federal, State, or local environmental laws or regulations, permits, or the Contractor's Environmental Protection Plan shall not relieve the Contractor of the duty to comply with those laws or regulations, permits, or the Contractor's Environmental Protection Plan.

## PART 2 PRODUCTS (NOT USED)

## PART 3 EXECUTION

### 3.1 PERMITS

Permits obtained by the Government related to the work of this contract are attached in Section 00830: ATTACHMENTS, or referenced in Section 01000: GENERAL. The Contractor is responsible for obtaining all applicable permits or licenses, except those obtained by the Government. The Contractor shall be responsible for implementing the terms and requirements of the permits held by the Contractor or the Government. A copy of permits

referenced in Section 01000: GENERAL are available for inspection in the Office of the District Engineer, Sibley Square At Mears Park, 190 5th Street East, St. Paul, Minnesota 55101-1638.

### 3.2 LAND RESOURCES

The Contractor shall confine all activities to areas defined by the drawings and specifications. Prior to the beginning of any construction, the Contractor shall identify any land resources to be preserved within the work area. Except in areas indicated on the drawings or specified to be cleared, the Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and land forms without approval. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. The Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs. Stone, soil, or other materials displaced into uncleared areas shall be removed by the Contractor.

#### 3.2.1 Work Area Limits

Prior to commencing construction activities, the Contractor shall mark the areas that need not be disturbed under this contract. Isolated areas within the general work area which are not to be disturbed shall be marked or fenced. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during darkness, any markers shall be visible in the dark. The Contractor's personnel shall be knowledgeable of the purpose for marking and/or protecting particular objects.

#### 3.2.2 Landscape

Trees, shrubs, vines, grasses, land forms and other landscape features indicated and defined on the drawings to be preserved shall be clearly identified by marking, fencing, or wrapping with boards, or any other approved techniques. The Contractor shall restore landscape features damaged or destroyed during construction operations outside the limits of the approved work area.

#### 3.2.3 Erosion and Sediment Controls

The Contractor shall be responsible for providing erosion and sediment control measures in accordance with Federal, State, and local laws and regulations. The erosion and sediment controls selected and maintained by the Contractor shall be such that water quality standards are not violated as a result of the Contractor's construction activities. The area of bare soil exposed at any one time by construction operations should be kept to a minimum. The Contractor shall construct or install temporary and permanent erosion and sediment control best management practices (BMPs). BMPs may include, but not be limited to, vegetation cover, stream bank stabilization, slope stabilization, silt fences, construction of terraces, interceptor channels, sediment traps, inlet and outfall protection, diversion channels, and sedimentation basins. Any temporary measures shall be removed after the area has been stabilized.

#### 3.2.4 Contractor Facilities and Work Areas

The Contractor's field offices, staging areas, stockpile storage, and temporary buildings shall be placed in areas designated on the drawings or

as directed by the Contracting Officer. Temporary movement or relocation of Contractor facilities shall be made only when approved. Erosion and sediment controls shall be provided for on-site borrow and spoil areas to prevent sediment from entering nearby waters. Temporary excavation and embankments for plant and/or work areas shall be controlled to protect adjacent areas.

### 3.3 WATER RESOURCES

The Contractor shall monitor construction activities to prevent pollution of surface and ground waters. Toxic or hazardous chemicals shall not be applied to soil or vegetation unless otherwise indicated. All water areas affected by construction activities shall be monitored by the Contractor. For construction activities immediately adjacent to impaired surface waters, the Contractor shall be capable of quantifying sediment or pollutant loading to that surface water when required by State or Federally issued Clean Water Act permits.

#### 3.3.1 Cofferdams, Diversions, and Dewatering Operations

Construction operations for dewatering, water return for hydraulic dredging, removal of cofferdams, tailrace excavation, and tunnel closure shall be controlled at all times to maintain compliance with existing State water quality standards and designated uses of the surface water body. The Contractor shall plan its operations and perform all work necessary to minimize adverse impact, such as water turbidity, on the habitat for wildlife and on water quality for downstream use.

#### 3.3.2 Stream Crossings

Stream crossings shall allow movement of materials or equipment without violating water pollution control standards of the Federal, State, and local governments.

#### 3.3.3 Wetlands

The Contractor shall not enter, disturb, destroy, or allow discharge of contaminants into any wetlands, unless authorized herein. The Contractor shall be responsible for the protection of wetlands shown on the drawings. Authorization to enter specific wetlands identified shall not relieve the Contractor from any obligation to protect other wetlands within, adjacent to, or in the vicinity of the construction site and associated boundaries.

### 3.4 AIR RESOURCES

Equipment operation, activities, or processes performed by the Contractor shall be in accordance with all Federal and State air emission and performance laws and standards.

#### 3.4.1 Particulates

Dust particles; aerosols and gaseous by-products from construction activities; and processing and preparation of materials, such as from asphaltic batch plants; shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, spoil areas, borrow areas, and other work areas within or outside the project boundaries free from particulates which would cause the Federal, State, and local air pollution standards to be exceeded.

or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated to keep the disturbed area damp at all times. The Contractor must have sufficient, competent equipment available to accomplish these tasks. Particulate control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs. The Contractor shall comply with all State and local visibility regulations.

#### 3.4.2 Odors

Odors from construction activities shall be controlled at all times. The odors shall not cause a health hazard and shall be in compliance with State regulations and/or local ordinances.

#### 3.4.3 Sound Intrusions

The Contractor shall keep construction activities under surveillance and control to minimize environment damage by noise. The Contractor shall comply with State rules.

### 3.5 CHEMICAL MATERIALS MANAGEMENT AND WASTE DISPOSAL

Disposal of wastes shall be as directed below, unless otherwise specified in other sections and/or shown on the drawings.

#### 3.5.1 Solid Wastes

Solid wastes (excluding dredge material and clearing debris) shall be placed in containers which are emptied on a regular schedule. Handling, storage, and disposal shall be conducted to prevent contamination. Segregation measures shall be employed so that no hazardous or toxic waste will become co-mingled with solid waste. The Contractor shall transport solid waste off Government property and dispose of it in compliance with Federal, State, and local requirements for solid waste disposal. A Subtitle D RCRA permitted landfill shall be the minimum acceptable off-site solid waste disposal option. The Contractor shall verify that the selected transporters and disposal facilities have the necessary permits and licenses to operate.

#### 3.5.2 Chemicals and Chemical Wastes

Chemicals shall be dispensed ensuring no spillage to the ground or water. Periodic inspections of dispensing areas to identify leakage and initiate corrective action shall be performed. Chemical waste shall be collected in corrosion resistant, compatible containers. Collection drums shall be monitored and removed to a staging or storage area when contents are within 6 inches of the top. Wastes shall be classified, managed, stored, and disposed in accordance with Federal, State, and local laws and regulations.

#### 3.5.3 Contractor Generated Hazardous Wastes/Excess Hazardous Materials

Hazardous wastes are defined in 40 CFR 261, or are as defined by applicable State and local regulations. Hazardous materials are defined in 49 CFR 171 - 178. The Contractor shall, at a minimum, manage and store hazardous waste in compliance with 40 CFR 262. The Contractor shall take sufficient measures to prevent spillage of hazardous and toxic materials during dispensing. The Contractor shall segregate hazardous waste from

other materials and wastes, shall protect it from the weather by placing it in a safe covered location, and shall take precautionary measures such as berming or other appropriate measures against accidental spillage. The Contractor shall be responsible for storage, describing, packaging, labeling, marking, and placarding of hazardous waste and hazardous material in accordance with 49 CFR 171 - 178, State, and local laws and regulations.

The Contractor shall transport Contractor generated hazardous waste off Government property in accordance with the Environmental Protection Agency and the Department of Transportation laws and regulations. The Contractor shall dispose of hazardous waste in compliance with Federal, State and local laws and regulations. Spills of hazardous or toxic materials shall be immediately reported to the Contracting Officer. Cleanup and cleanup costs due to spills shall be the Contractor's responsibility. The disposition of Contractor generated hazardous waste and excess hazardous materials are the Contractor's responsibility.

#### 3.5.4 Fuel and Lubricants

Storage, fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spill and evaporation. Fuel, lubricants and oil shall be managed and stored in accordance with all Federal, State, regional, and local laws and regulations. Used lubricants and used oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with 40 CFR 279, State, and local laws and regulations.

#### 3.5.5 Waste Water

Waste water from construction activities, such as onsite material processing, concrete curing, foundation and concrete clean-up, water used in concrete trucks, forms, etc. shall not be allowed to enter water ways.

#### 3.6 RECYCLING AND WASTE MINIMIZATION

The Contractor shall participate in State and local government sponsored recycling programs.

#### 3.7 HISTORICAL, ARCHAEOLOGICAL, AND CULTURAL RESOURCES

Existing historical, archaeological, and cultural resources within the Contractor's work area are shown on the drawings, or will be designated by the Contracting Officer, if any have been identified. The Contractor shall protect these resources and shall be responsible for their preservation during the life of the Contract. If during excavation or other construction activities any previously unidentified or unanticipated historical, archaeological, and cultural resources are discovered or found, all activities that may damage or alter such resources shall be temporarily suspended. Resources covered by this paragraph include but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone, charcoal, or other deposits; rock or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human activities. Upon such discovery or find, the Contractor shall immediately notify the Contracting Officer so that the appropriate authorities may be notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. The Contractor shall cease all activities that may result in impact to or the destruction of these resources. The Contractor shall secure the area and prevent employees or other persons from trespassing on, removing, or otherwise disturbing such resources.

### 3.8 BIOLOGICAL RESOURCES

The Contractor shall minimize interference with, disturbance to, and damage to fish, wildlife, and plants including their habitat. The Contractor shall be responsible for the protection of threatened and endangered animal and plant species including their habitat in accordance with Federal, State, regional, and local laws and regulations.

### 3.9 PESTICIDES

#### 3.9.1 Pesticide Delivery and Storage

Pesticides shall be delivered to the site in the original, unopened containers bearing legible labels indicating the EPA registration number and the manufacturer's registered uses. Pesticides shall be stored according to manufacturer's instructions and under lock and key when unattended.

#### 3.9.2 Qualifications

For the application of pesticides, the Contractor shall use the services of a subcontractor whose principal business is pest control. The subcontractor shall be licensed and certified in the state where the work is to be performed.

#### 3.9.3 Pesticide Handling Requirements

The Contractor shall formulate, treat with, and dispose of pesticides and associated containers in accordance with label directions and shall use the clothing and personal protective equipment specified on the labeling for use during all phases of the application. Material Safety Data Sheets (MSDS) shall be available for all pesticide products.

#### 3.9.4 Application

Pesticides shall be applied by a State Certified Pesticide Applicator in accordance with EPA label restrictions and recommendation. The Certified Applicator shall wear clothing and personal protective equipment as specified on the pesticide label. Water used for formulating shall only come from locations designated by the Contracting Officer. The Contractor shall not allow the equipment to overflow. Prior to application of pesticide, all equipment shall be inspected for leaks, clogging, wear, or damage and shall be repaired prior to being used.

### 3.10 PREVIOUSLY USED EQUIPMENT

The Contractor shall clean all previously used construction equipment prior to bringing it onto the project site. The Contractor shall ensure that the equipment is free from soil residuals, egg deposits from plant pests, noxious weeds, and plant seeds. The Contractor shall consult with the USDA jurisdictional office for additional cleaning requirements.

### 3.11 MAINTENANCE OF POLLUTION FACILITIES

The Contractor shall maintain permanent and temporary pollution control facilities and devices for the duration of the contract or for that length of time construction activities create the particular pollutant.

3.12 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel shall be trained in all phases of environmental protection and pollution control. The Contractor shall conduct environmental protection/pollution control meetings for all Contractor personnel prior to commencing construction activities. Additional meetings shall be conducted for new personnel and when site conditions change. The training and meeting agenda shall include: methods of detecting and avoiding pollution; familiarization with statutory and contractual pollution standards; installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental protection/pollution control; anticipated hazardous or toxic chemicals or wastes, and other regulated contaminants; recognition and protection of archaeological sites, artifacts, wetlands, and endangered species and their habitat that are known to be in the area.

3.13 POST CONSTRUCTION CLEANUP

The Contractor shall clean up all areas used for construction in accordance with Contract Clause 52.236-12 CLEANING UP. The Contractor shall, unless otherwise instructed in writing by the Contracting Officer, obliterate all signs of temporary construction facilities such as haul roads, work area, structures, foundations of temporary structures, stockpiles of excess or waste materials, and other vestiges of construction prior to final acceptance of the work. The disturbed area shall be graded, filled and the entire area seeded unless otherwise indicated.

-- End of Section --

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**01/02**

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SECTION 01451

CONTRACTOR QUALITY CONTROL  
01/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 3740	(2001) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction
ASTM E 329	(2000b) Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction

1.2 QUALITY CONTROL ORGANIZATION

1.2.1 Personnel Requirements

The requirements for the CQC organization are a CQC System Manager and sufficient number of additional qualified personnel to ensure safety and contract compliance. The Safety and Health Manager shall receive direction and authority from the CQC System Manager and shall serve as a member of the CQC staff. The Contractor's CQC staff shall maintain a presence at the site at all times during progress of the work and have complete authority and responsibility to take any action necessary to ensure contract compliance. The CQC staff shall be subject to acceptance by the Contracting Officer. The Contractor shall provide adequate office space, filing systems and other resources as necessary to maintain an effective and fully functional CQC organization. Complete records of all letters, material submittals, shop drawing submittals, schedules and all other project documentation shall be maintained at the site at all times, except as otherwise acceptable to the Contracting Officer.

1.2.2 CQC System Manager

The Contractor shall identify as CQC System Manager an individual within the onsite work organization who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager shall be a person with a minimum of 5 years experience on projects similar to the construction work on this project. This CQC System Manager shall be on the site at all times during construction and shall be employed by the prime Contractor. The CQC System Manager shall be assigned as System Manager but may have duties as project superintendent in addition to quality control. An alternate for the CQC System Manager shall be identified in the plan to serve in the event of the

System Manager's absence. The requirements for the alternate shall be the same as for the designated CQC System Manager.

#### 1.2.3 Additional Requirement

In addition to the above qualifications, the CQC System Manager shall have completed the course entitled "Construction Quality Management For Contractors". This course is periodically offered through the Government in the Minneapolis - St. Paul, Minnesota metropolitan area.

#### 1.2.4 Organizational Changes

The Contractor shall maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, the Contractor shall revise the CQC Plan to reflect the changes and submit the changes to the Contracting Officer for acceptance.

#### 1.3 PAYMENT

The Contractor shall be responsible for the work of this section, without any direct compensation being made other than the payment received for contract items.

#### PART 2 PRODUCTS (Not Applicable)

#### PART 3 EXECUTION

##### 3.1 GENERAL REQUIREMENTS

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in compliance with the Contract Clause titled "Inspection of Construction." The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The site project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Contracting Officer for non-compliance with the quality requirements specified in the contract. The site project superintendent in this context shall be the highest level manager responsible for the overall construction activities at the site, including quality and production. The site project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to the Contracting Officer, and shall be responsible for all construction and construction related activities at the site.

##### 3.2 QUALITY CONTROL PLAN

###### 3.2.1 General

The Contractor shall furnish for review by the Government, not later than 15 days after receipt of notice to proceed, the Contractor Quality Control (CQC) Plan proposed to implement the requirements of the Contract Clause titled "Inspection of Construction." The plan shall identify personnel, procedures, control, instructions, tests, records, and forms to be used. The Government will consider an interim plan for the first 30 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the

particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started.

### 3.2.2 Content of the CQC Plan

The CQC Plan shall include, as a minimum, the following to cover all construction operations, both onsite and offsite, including work by subcontractors, fabricators, suppliers, and purchasing agents:

- a. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff shall implement the three phase control system for all aspects of the work specified. The staff shall include a CQC System Manager who shall report to the project superintendent or someone higher in the Contractor's organization.
- b. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
- c. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities. Copies of these letters shall also be furnished to the Government.
- d. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, offsite fabricators, suppliers, and purchasing agents. These procedures shall be in accordance with Section 01330 SUBMITTAL PROCEDURES.
- e. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. (Laboratory facilities will be approved by the Contracting Officer.)
- f. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.
- g. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures shall establish verification that identified deficiencies have been corrected.
- h. Reporting procedures, including proposed reporting formats.
- i. A list of the definable features of work. A definable feature of work is a task which is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications

may generally be considered as a definable feature of work, there are frequently more than one definable features under a particular section. This list will be agreed upon during the coordination meeting.

### 3.2.3 Acceptance of Plan

Acceptance of the Contractor's plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. The Government reserves the right to require the Contractor to make changes in the CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

### 3.2.4 Notification of Changes

After acceptance of the CQC Plan, the Contractor shall notify the Contracting Officer in writing of any proposed change. Proposed changes are subject to acceptance by the Contracting Officer.

## 3.3 COORDINATION MEETING

After the Preconstruction Conference, before start of construction, and prior to acceptance by the Government of the CQC Plan, the Contractor shall meet with the Contracting Officer or Authorized Representative and discuss the Contractor's quality control system. The CQC Plan shall be submitted for review a minimum of 10 calendar days prior to the Coordination Meeting.

During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's Management and control with the Government's Quality Assurance. Minutes of the meeting shall be prepared by the Government and signed by both the Contractor and the Contracting Officer. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures which may require corrective action by the Contractor.

## 3.4 SUBMITTALS AND DELIVERABLES

Submittals, if needed, shall be made as specified in Section 01330 SUBMITTAL PROCEDURES. The CQC organization shall be responsible for certifying that all submittals and deliverables are in compliance with the contract requirements.

## 3.5 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of control shall be conducted by the CQC System Manager for each definable feature of work as follows:

### 3.5.1 Preparatory Phase

This phase shall be performed prior to beginning work on each definable feature of work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase shall

include:

- a. A review of each paragraph of applicable specifications, reference codes, and standards. A copy of those sections of referenced codes and standards applicable to that portion of the work to be accomplished in the field shall be made available by the Contractor at the preparatory inspection. These copies shall be maintained in the field and available for use by Government personnel until final acceptance of the work.
- b. A review of the contract drawings.
- c. A check to assure that all materials and/or equipment have been tested, submitted, and approved.
- d. Review of provisions that have been made to provide required control inspection and testing.
- e. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.
- f. A physical examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
- g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- h. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
- i. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Contracting Officer.
- j. Discussion of the initial control phase.
- k. The Government shall be notified at least 48 hours in advance of beginning the preparatory control phase. This phase shall include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC System Manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

### 3.5.2 Initial Phase

This phase shall be accomplished at the beginning of a definable feature of work. The following shall be accomplished:

- a. A check of work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.
- b. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing.

- c. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards. Compare workmanship with required sample panels as appropriate.
- d. Resolve all differences.
- e. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- f. The Government shall be notified at least 48 hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC System Manager and attached to the daily CQC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases.
- g. The initial phase should be repeated for each new crew to work onsite, or any time acceptable specified quality standards are not being met.

#### 3.5.3 Follow-up Phase

Daily checks shall be performed to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted and all deficiencies corrected prior to the start of additional features of work which may be affected by the deficient work. The Contractor shall not build upon nor conceal non-conforming work.

#### 3.5.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases shall be conducted on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable CQC staff, onsite production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

### 3.6 TESTS

#### 3.6.1 Testing Procedure

The Contractor shall perform specified or required tests to verify that control measures are adequate to provide a product which conforms to contract requirements. Upon request, the Contractor shall furnish to the Government duplicate samples of test specimens for possible testing by the Government. Testing includes operation and/or acceptance tests when specified. The Contractor shall procure the services of a testing laboratory meeting the requirements listed under PARAGRAPH: CAPABILITY CHECK, or establish a testing laboratory at the project site meeting those requirements. The Contractor shall perform the following activities and record and provide the following data:

- a. Verify that testing procedures comply with contract requirements.
- b. Verify that facilities and testing equipment are available and

comply with testing standards.

- c. Check test instrument calibration data against certified standards.
- d. Verify that recording forms and test identification control number system, including all of the test documentation requirements, have been prepared.
- e. Results of all tests taken, both passing and failing tests, shall be recorded on the CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test shall be given. If approved by the Contracting Officer, actual test reports may be submitted later with a reference to the test number and date taken. An information copy of tests performed by an offsite or commercial test facility shall be provided directly to the Contracting Officer. Failure to submit timely test reports as stated may result in nonpayment for related work performed and disapproval of the test facility for this contract.

### 3.6.2 Testing Laboratories

#### 3.6.2.1 Capability Check

The Government reserves the right to check laboratory equipment in the proposed laboratory for compliance with the standards set forth in the contract specifications and to check the laboratory technician's testing procedures and techniques. Laboratories utilized for testing soils, concrete, asphalt, and steel shall meet criteria detailed in ASTM D 3740 and ASTM E 329. The Contractor shall submit a Quality Management Manual meeting the requirements of ASTM D 3740 and ASTM E 329 for each laboratory to be used, including onsite project laboratories.

#### 3.6.2.2 Capability Recheck

If the selected laboratory fails the capability check, the Contractor will be assessed a charge of \$1000.00 to reimburse the Government for each succeeding recheck of the laboratory or the checking of a subsequently selected laboratory. Such costs will be deducted from the contract amount due the Contractor.

#### 3.6.3 Onsite Laboratory

The Government reserves the right to utilize the Contractor's control testing laboratory and equipment to make assurance tests and to check the Contractor's testing procedures, techniques, and test results at no additional cost to the Government.

#### 3.6.4 Furnishing or Transportation of Samples for Testing

Costs incidental to the transportation of samples or materials shall be borne by the Contractor. Samples of materials for test verification and acceptance testing by the Government shall be delivered to the Contracting Officer. Coordination for each specific test, exact delivery location, and dates will be made with the Contracting Officer.

### 3.7 COMPLETION INSPECTION

#### 3.7.1 Punch-Out Inspection

Near the end of the work, or any increment of the work established by a time stated in the SPECIAL CONTRACT REQUIREMENTS, "Commencement, Prosecution, and Completion of Work", or by the specifications, the CQC Manager shall conduct an inspection of the work. A punch list of items which do not conform to the approved drawings and specifications shall be prepared and included in the CQC documentation, as required by paragraph DOCUMENTATION. The list of deficiencies shall include the estimated date by which the deficiencies will be corrected. The CQC System Manager or staff shall make a second inspection to ascertain that all deficiencies have been corrected. Once this is accomplished, the Contractor shall notify the Government that the facility is ready for the Government Pre-Final inspection.

#### 3.7.2 Pre-Final Inspection

The Government will perform the pre-final inspection to verify that the facility is complete and ready to be occupied. A Government Pre-Final Punch List may be developed as a result of this inspection. The Contractor's CQC System Manager shall ensure that all items on this list have been corrected before notifying the Government, so that a Final inspection with the customer can be scheduled. Any items noted on the Pre-Final inspection shall be corrected in a timely manner. These inspections and any deficiency corrections required by this paragraph shall be accomplished within the time slated for completion of the entire work or any particular increment of the work if the project is divided into increments by separate completion dates.

#### 3.7.3 Final Acceptance Inspection

The Contractor's quality control inspection personnel, plus the superintendent or other primary management person, and the Contracting Officer's Representative shall be in attendance during the final acceptance inspection. Additional Government personnel including, but not limited to, those from Base/Post Civil Facility Engineer user groups, and major commands may also be in attendance. The final acceptance inspection will be formally scheduled by the Contracting Officer based upon results of the Pre-Final inspection. Notice shall be given to the Contracting Officer at least 14 days prior to the final acceptance inspection and shall include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the contract, will be complete and acceptable by the date scheduled for the final acceptance inspection. Failure of the Contractor to have all contract work acceptably complete for this inspection will be cause for the Contracting Officer to bill the Contractor for the Government's additional inspection cost in accordance with the contract clause titled "Inspection of Construction".

### 3.8 DOCUMENTATION

The Contractor shall maintain current records providing factual evidence that required quality control activities and/or tests have been performed. These records shall include the work of subcontractors and suppliers and shall be on an acceptable form that includes, as a minimum, the following information:

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- a. Contractor/subcontractor and their area of responsibility.
- b. Operating plant/equipment with hours worked, idle, or down for repair.
- c. Work performed each day, giving location, description, and by whom. When Network Analysis (NAS) is used, identify each phase of work performed each day by NAS activity number.
- d. Test and/or control activities performed with results and references to specifications/drawings requirements. The control phase shall be identified (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.
- e. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- f. Submittals and deliverables reviewed, with contract reference, by whom, and action taken.
- g. Offsite surveillance activities, including actions taken.
- h. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- i. Instructions given/received and conflicts in plans and/or specifications.
- j. Contractor's verification statement.

These records shall indicate a description of trades working on the project, the number of personnel working, weather conditions encountered, and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Government daily within 24 hours after the date covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every 7 days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the CQC System Manager. The report from the CQC System Manager shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

### 3.9 SAMPLE FORMS

The following sample forms are enclosed at the end of this section:

- a. Construction Quality Control (CQC) Management Report
- b. Preparatory Phase Checklist
- c. Initial Phase Checklist

3.10 NOTIFICATION OF NONCOMPLIANCE

The Contracting Officer will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End of Section --

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# CONSTRUCTION QUALITY CONTROL (CQC) MANAGEMENT REPORT

## Contractor Production

Contractor's Name

Daily Report No: \_\_\_\_\_

Date: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Project Title & Location: \_\_\_\_\_

Weather: \_\_\_\_\_ Precipitation: \_\_\_\_\_ in. Temp.: \_\_\_\_\_ Min. \_\_\_\_\_ Max.

1. Contract/Subcontractors and Area of Responsibility:

[illegible]

2. Operating Plant or Equipment. (Not hand tools)

[illegible]

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CQC Management Report (cont.)

3. Work performed today: (Indicate location and description of work performed by prime and/or subcontractors by letter in table above).

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4. Results of control activities: (Indicate whether P - Preparatory, I - Initial, or F - Follow-up Phase. When a P or I meeting is conducted, complete attachment 1-A or 1-B, respectively. When network analysis system is used, identify work by use of I-J numbers)

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5. Test performed as required by plans and/or specifications:

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6. Material received:

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CQC Management Report (cont.)

7. Submittals Reviewed:

(a) Submittal No.	(b) Spec/Plan Reference	(c) By Whom	(d) Action
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. Off-site surveillance activities, including action taken:

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9. Job safety: (Report violations; Corrective instructions given; Corrective actions taken).

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10. Remarks: (Instructions received or given. Conflict(s) in Plans and/or Specifications)

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Contractor's Verification: On behalf of the Contractor, I certify this report is complete and correct, and all materials and equipment used and work performed during this reporting period are in compliance with the contract plans and specifications, to the best of my knowledge, except as noted above.

\_\_\_\_\_  
CQC System Manager

SPRING LAKE ISLANDS EMP

PREPARATORY PHASE CHECKLIST

Contract No.: \_\_\_\_\_ Date: \_\_\_\_\_

Definable Feature: \_\_\_\_\_ Spec Section: \_\_\_\_\_

Government Rep Notified \_\_\_\_\_ Hours in Advance Yes \_\_\_\_ No \_\_\_\_

I. Personnel Present.

	Name	Position	Company/Government
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____

(List additional personnel on reverse side)

II. Submittals.

1. Review submittals and/or submittal log 4288. Have all submittals been approved? Yes \_\_\_\_ No \_\_\_\_

If No, what items have not been submitted?

a. \_\_\_\_\_  
b. \_\_\_\_\_  
c. \_\_\_\_\_

2. Are all materials on hand? Yes \_\_\_\_ No \_\_\_\_

a. \_\_\_\_\_  
b. \_\_\_\_\_  
c. \_\_\_\_\_

3. Check approved submittals against delivered material. (This should be done as material arrives).

Comments: \_\_\_\_\_  
\_\_\_\_\_

III. Material Storage.

Are materials stored properly? Yes \_\_\_\_ No \_\_\_\_

If No, what action is taken?

\_\_\_\_\_

SPRING LAKE ISLANDS EMP

Preparatory Phase Checklist (Cont'd)

IV. Specifications.

1. Review each paragraph of specifications.

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2. Discuss procedure for accomplishing the work.

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3. Clarify any differences.

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V. Preliminary Work.

Ensure preliminary work is correct.

If not, what action is taken? \_\_\_\_\_

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VI. Testing.

1. Identify test to be performed, frequency, and by whom.

2. When required? \_\_\_\_\_

3. Where required? \_\_\_\_\_

4. Review Testing Plan. \_\_\_\_\_

5. Have test facilities been approved? \_\_\_\_\_

VII. Safety.

1. Review applicable portion of EM 385-1-1. \_\_\_\_\_

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2. Activity Hazard Analysis approved? Yes \_\_\_\_\_ No \_\_\_\_\_

VIII. Corps of Engineers comments during meeting.

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\_\_\_\_\_  
CQC System Manager

SPRING LAKE ISLANDS EMP

INITIAL PHASE CHECKLIST

Contract No.: \_\_\_\_\_ Date: \_\_\_\_\_

Definable Feature: \_\_\_\_\_

Government Rep Notified: \_\_\_\_\_ Hours in Advance Yes \_\_\_\_\_ No \_\_\_\_\_

I. Personnel Present:

	Name	Position	Company/Government
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

(List additional personnel on reverse side)

II. Identify full compliance with procedures identified at preparatory. Coordinate plans, specifications, and submittals.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

III. Preliminary Work. Ensure preliminary work is complete and correct. If not, what action is taken?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Establish Level of Workmanship.

1. Where is work located? \_\_\_\_\_
2. Is a sample panel required? Yes \_\_\_\_\_ No \_\_\_\_\_
3. Will the initial work be considered as a sample? Yes \_\_\_\_\_ No \_\_\_\_\_  
(If yes, maintain in present condition as long as possible).

V. Resolve any Differences.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Review job conditions using EM 385-1-1 and job hazard analysis.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CQC System Manager

SPRING LAKE ISLANDS EMP

SECTION TABLE OF CONTENTS

DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01500

TEMPORARY CONSTRUCTION FACILITIES

**01/02**

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- 1.1 GROUNDS AND ROADWAYS
  - 1.1.1 Availability of Grounds
  - 1.1.2 Drainage Facilities
- 1.2 PAVEMENT REMOVAL AND REPLACEMENT
- 1.3 AVAILABILITY AND USE OF UTILITY SERVICES
  - 1.3.1 Temporary Electrical Facilities
  - 1.3.2 Sanitation
  - 1.3.3 Telephone
- 1.4 PROTECTION AND MAINTENANCE OF TRAFFIC
  - 1.4.1 Off-Site Haul routes
  - 1.4.2 On-Site Haul Roads
  - 1.4.3 Barricades
- 1.5 CONTRACTOR'S TEMPORARY FACILITIES
  - 1.5.1 Administrative Field Offices
  - 1.5.2 Staging Area
- 1.6 PLANT COMMUNICATION
- 1.7 TEMPORARY PROJECT SAFETY FENCING

PART 2 PRODUCTS

- 2.1 BULLETIN BOARD, PROJECT SIGN, AND PROJECT SAFETY SIGN
  - 2.1.1 Bulletin Board
  - 2.1.2 Project and Safety Signs

PART 3 EXECUTION

- 3.1 MAINTENANCE OF GROUNDS
- 3.2 CLEANUP
- 3.3 RESTORATION OF STORAGE [AND WORK] AREAS

-- End of Section Table of Contents --

SECTION 01500

TEMPORARY CONSTRUCTION FACILITIES  
01/02

PART 1 GENERAL

1.1 GROUNDS AND ROADWAYS

1.1.1 Availability of Grounds

There are not any boundary limits for the Contractor's use during the life of the contract shown on the drawings. Any rights-of-entry or grounds desired by the Contractor shall be obtained by the Contractor at its own expense, and copies of agreements for the use of such rights-of-entry shall be furnished to the Contracting Officer before entering thereon. Such agreements shall clearly relieve the Government of any responsibility for damages resulting from the use of the grounds.

1.1.2 Drainage Facilities

Insofar as natural drainage from the protected areas is obstructed by contract operations, it shall be the Contractor's responsibility to make adequate provision for accommodating such drainage in a satisfactory manner during the life of this contract, either by temporary means or by use of the permanent construction and operation of the permanent facilities.

1.2 PAVEMENT REMOVAL AND REPLACEMENT

Where roads are cut, removed, or otherwise damaged in the prosecution of the work the Contractor shall replace all pavements or other surfacings so removed or damaged to their preconstruction condition. After backfill is completed on paved streets, a temporary surface shall be laid down and the street opened to the traffic in order to provide access to abutting property. Restoration of the original street surface construction shall be completed no later than 60 calendar days after starting excavation. Should weather conditions preclude the restoration of the original surface material, temporary resurfacing utilizing a bituminous mixture shall be installed with the final surface constructed no later than June 1 of the following construction season.

1.3 AVAILABILITY AND USE OF UTILITY SERVICES

1.3.1 Temporary Electrical Facilities

The Contractor shall be responsible for coordination and costs for electrical power required for the Contractor's operations, including all costs for utility company hookup, installation/dismantling of transformers and distribution lines. In general, the Contractor shall establish its own service connection with the utility company. If the Contractor proposes to use an existing Government service connection, a request shall be submitted for approval to verify the Contractor's use will not interfere with operation of the facilities, and the monthly service fees will be paid for in whole (including Government power consumption) by the Contractor.

#### 1.3.2 Sanitation

The Contractor shall provide and maintain within the construction area field-type sanitary facilities in accordance with EM 385-1-1. These facilities shall include but not be limited to toilet, washing, and drinking water facilities.

#### 1.3.3 Telephone

The Contractor shall make arrangements and pay all costs for their telephone facilities desired. Government personnel will not take or deliver messages for the Contractor.

#### 1.4 PROTECTION AND MAINTENANCE OF TRAFFIC

During construction the Contractor shall provide access and temporary relocated roads as necessary to maintain traffic. The Contractor shall maintain and protect traffic on all affected roads during the construction period except as otherwise specifically directed by the Contracting Officer. Measures for the protection and diversion of traffic, including the provision of watchmen and flagmen, erection of barricades, placing of lights around and in front of equipment and the work, and the erection and maintenance of adequate warning, danger, and direction signs, shall be as required by the State and local authorities having jurisdiction. The traveling public shall be protected from damage to person and property. The Contractor's traffic on roads selected for hauling material to and from the site shall interfere as little as possible with public traffic. The Contractor shall investigate the adequacy of existing roads and the allowable load limit on these roads. Dust control shall be provided as stated in Section 01355 ENVIRONMENTAL PROTECTION.

##### 1.4.1 Off-Site Haul routes

The Contractor shall be responsible for securing all permits required along haul routes. The Contractor shall be the sole permittee and shall be responsible for meeting all obligations of the permits. A copy of each permit shall be submitted to the Contracting Officer. The Contractor, as between the Government and the Contractor, has sole responsibility for damage or deterioration of the Contractor's haul routes.

##### 1.4.2 On-Site Haul Roads

The Contractor shall, at its own expense, construct access and haul roads necessary for proper prosecution of the work under this contract. Haul roads shall be constructed with suitable grades and widths; sharp curves, blind corners, and dangerous cross traffic shall be avoided. The Contractor shall provide necessary lighting, signs, barricades, and distinctive markings for the safe movement of traffic. The method of dust control, although optional, shall be adequate to ensure safe operation at all times. Location, grade, width, and alignment of construction and hauling roads shall be subject to approval by the Contracting Officer. Lighting shall be adequate to assure full and clear visibility for full width of haul road and work areas during any night work operations. Upon completion of the work, haul roads designated by the Contracting Officer shall be removed.

##### 1.4.3 Barricades

The Contractor shall erect and maintain temporary barricades to limit

public access to hazardous areas. Such barricades shall be required whenever safe public access to paved areas such as roads, parking areas or sidewalks is prevented by construction activities or as otherwise necessary to ensure the safety of both pedestrian and vehicular traffic. Barricades shall be securely placed, clearly visible with adequate illumination to provide sufficient visual warning of the hazard during both day and night.

## 1.5 CONTRACTOR'S TEMPORARY FACILITIES

### 1.5.1 Administrative Field Offices

The Contractor shall provide and maintain administrative field office facilities within the construction area at the designated site.

### 1.5.2 Staging Area

The Contractor shall provide and maintain a staging area at its own option.

## 1.6 PLANT COMMUNICATION

Whenever the Contractor has the individual elements of its plant so located that operation by normal voice between these elements is not satisfactory, the Contractor shall install a satisfactory means of communication, such as telephone or other suitable devices. The devices shall be made available for use by Government personnel.

## 1.7 TEMPORARY PROJECT SAFETY FENCING

As soon as practicable, but not later than 15 days after the date established for commencement of work, the Contractor shall furnish and erect temporary project safety fencing at the work site. The safety fencing shall be a high visibility orange colored, high density polyethylene grid or approved equal, a minimum of 42 inches high, supported and tightly secured to steel posts located on maximum 10 foot centers, generally located to encompass the active construction areas. The safety fencing shall be maintained by the Contractor during the life of the contract and, upon completion and acceptance of the work, shall become the property of the Contractor and shall be removed from the work site.

## PART 2 PRODUCTS

### 2.1 BULLETIN BOARD, PROJECT SIGN, AND PROJECT SAFETY SIGN

#### 2.1.1 Bulletin Board

Immediately upon beginning of work, the Contractor shall provide a weatherproof glass-covered bulletin board not less than 36 by 48 inches in size for displaying the Equal Employment Opportunity poster, a copy of the wage decision contained in the contract, Wage Rate Information poster, and other information approved by the Contracting Officer. The bulletin board shall be located at the project site in a conspicuous place easily accessible to all employees, as approved by the Contracting Officer. Legible copies of the aforementioned data shall be displayed until work is completed. Upon completion of work the bulletin board shall be removed by and remain the property of the Contractor.

### 2.1.2 Project and Safety Signs

The Contractor shall furnish and erect a Project sign and a Safety sign in a location selected by the Contracting Officer at the project site within 15 days after receipt of the notice to proceed. The requirements for the signs and their content shall be as shown on the drawings at the end of this section. The data required by the safety sign shall be corrected daily. Signs shall be maintained throughout the construction period, and upon completion of the project, the signs shall be removed from the site. The PROJECT DESCRIPTION and PROJECT NAME shall be as follows:

#### PROJECT DESCRIPTION:

ENVIRONMENTAL MANAGEMENT PROGRAM

#### PROJECT NAME:

SPRING LAKE ISLANDS  
POOL 5  
MISSISSIPPI RIVER  
BUFFALO CITY, WISCONSIN

IN PARTNERSHIP WITH USFWS, WDNR, MDNR AND PUBLIC INTERESTS

## PART 3 EXECUTION

### 3.1 MAINTENANCE OF GROUNDS

Borrow areas, stockpiles, and other grounds stripped of natural vegetation or disturbed by the Contractor's operations shall be kept free of noxious weeds, debris, and unnecessary materials and supplies. Control of vegetation shall comply with local ordinances.

### 3.2 CLEANUP

Construction debris, waste materials, packaging material and the like shall be removed from the work site. Any dirt or mud which is tracked onto paved or surfaced roadways shall be cleaned away. Materials resulting from demolition activities which are salvageable shall be stored within the fenced area described above or at the supplemental storage area. Stored material not in trailers, whether new or salvaged, shall be neatly stacked when stored.

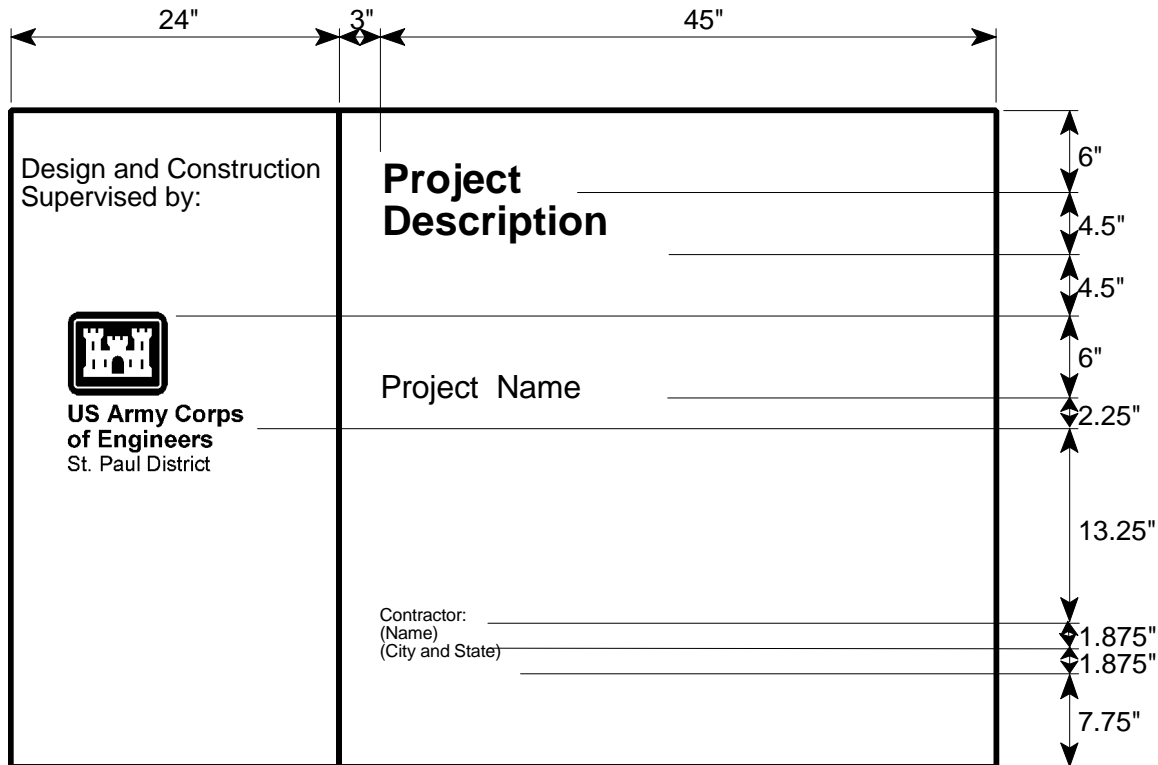
### 3.3 RESTORATION OF STORAGE [AND WORK] AREAS

Upon completion of the project and after removal of trailers, materials, and equipment from within the fenced area, the fence shall be removed and will become the property of the Contractor. Areas used by the Contractor for the storage of equipment or material, or other use, shall be restored to the original or better condition. Gravel used to traverse grassed areas shall be removed and the area restored to its original condition, including topsoil and seeding as necessary.

-- End of Section --

## PROJECT SIGN

The graphic format for this 4' x 6' sign panel follows the legend guidelines and layout as specified below. The large 4' x 4' section of the panel on the right is to be white with black legend. A 2' x 4' decal provided by the Corps shall be placed on the left side of the sign panel.



### Project Description:

One to three line project title legend describes the work being done under this contract.

Color: Black; Typeface: 3" Helvetica Bold; Maximum line length: 42".

### Project Name:

One to three line identification of project or facility.

Color: Black; Typeface: 1.5" Helvetica Bold; Maximum line length: 42".

Cross-align the first line of PROJECT NAME with the first line of the Corps Signature as shown.

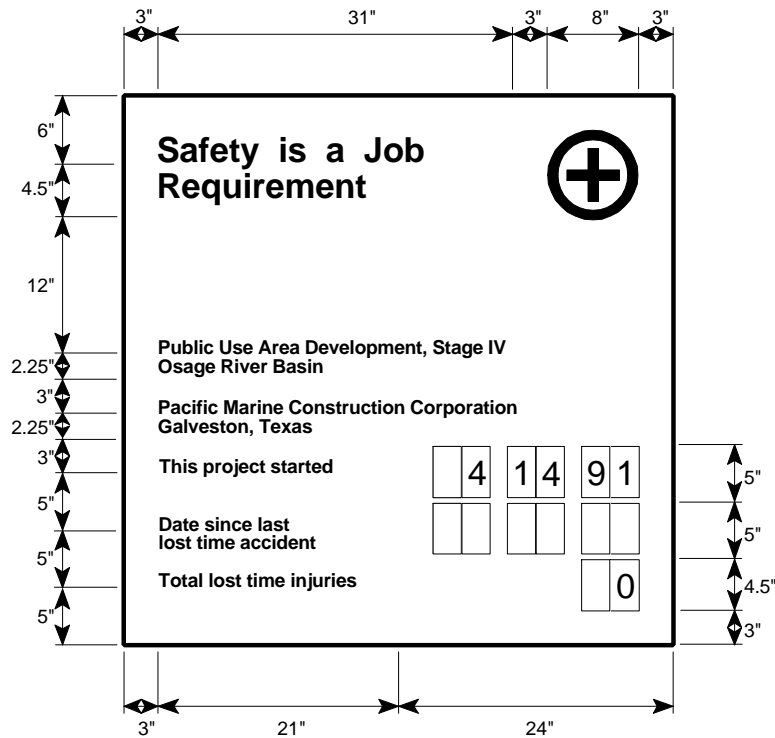
### Contractor:

One to five line identification of prime contractors including: type (architect, general contractor, etc.), corporate or firm name, city, state.

Color: Black; Typeface: 1.25" Helvetica Bold; Maximum line length: 21".

All typography is flush left and ragged right, upper and lower case with initial capitals only as shown. Letter and word spacing to follow Corps Standards (EP 310-1-6a and 6b).

## SAFETY SIGN



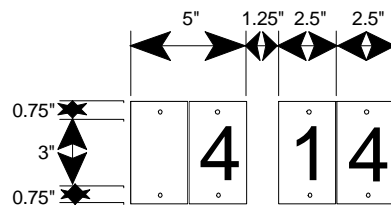
All typography is flush left and rag right, upper and lower case with initial capitals only as shown. Letter and word spacing to follow Corps Standards (EP 310-1-6a and 6b).

Legend Group 1: Standard two-line title "Safety is a Job Requirement" with (8" od.) Safety Green First Aid logo. Typeface: 3" Helvetica Bold; Color: Black.

Legend Group 2: One- to two-line project title legend describes the work being done under this contract and name of host project. Typeface: 1.5" Helvetica Regular; Color: Black; Maximum line length: 42".

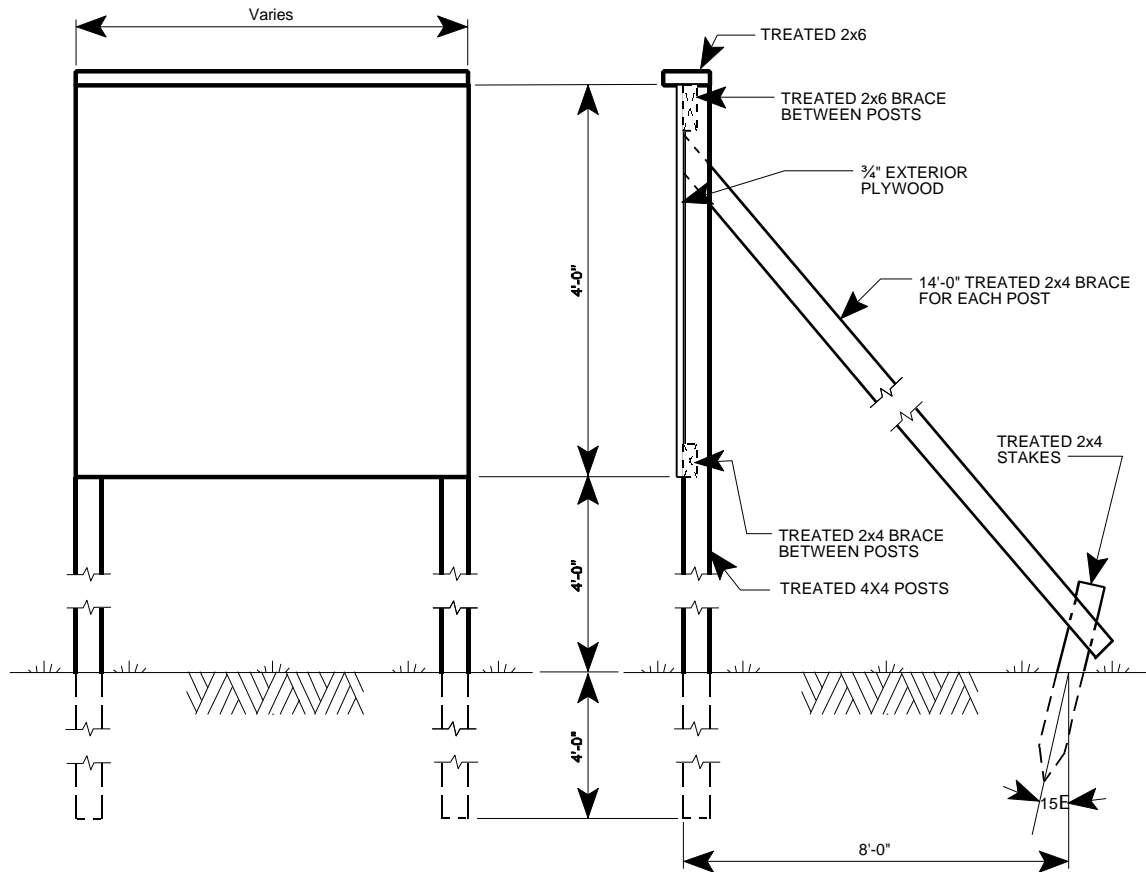
Legend Group 3: One- to two-line identification: name of prime contractor and city, state address. Typeface: 1.5" Helvetica Regular; Color: Black; Maximum line length: 42".

Legend Group 4: Standard safety record captions as shown. Typeface: 1.25" Helvetica Regular; Color: Black.



Replaceable numbers are to be mounted on white 0.060 aluminum plates and screw-mounted to background. Typeface: 3" Helvetica Regular; Color: Black; Plate size: 2.5" x 4.5".

## SIGN ERECTION DETAILS



SPRING LAKE ISLANDS EMP

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DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01720

CONTRACTOR SURVEYS

**05/01**

PART 1 GENERAL

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 FIELD LAYOUT SURVEYS

3.1.1 Alignment Changes

3.2 AS-BUILT SURVEYS

3.2.1 Dredging As-builts

3.3 QUANTITY SURVEYS FOR MEASUREMENT AND PAYMENT

-- End of Section Table of Contents --

SECTION 01720

CONTRACTOR SURVEYS  
05/01

PART 1 GENERAL

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 FIELD LAYOUT SURVEYS

The Contractor shall layout the work from the Government established bench marks in accordance with CONTRACT CLAUSE 52.236-17 LAYOUT OF WORK. The construction of each feature of work shall follow the alignments as indicated on the drawings. The Contractor shall have in place, at least 7 calendar days prior to commencing construction operations, sufficient stakes and markings to enable the Contracting Officer to observe the field layout of the alignment and limits of each feature of work. For each feature of work, these stakes shall define areal limits such that the Contracting Officer can easily determine, without additional surveys, if alignment and/or limit adjustments need to be made. For islands these stakes shall define centerline, stationing, outermost fill/cut limits, and work limits. General site work shall be staked to define staging areas, storage areas, and other area limits as directed. The Contracting Officer may waive these requirements for certain areas. No work shall take place without approval of field layout by the Contracting Officer.

3.1.1 Alignment Changes

The Government reserves the right to make changes in the alignment of any feature of work as may be found necessary during the course of the contract. If it becomes necessary, through no fault of the Contractor, to abandon a line, location or feature on which work has been done, an equitable adjustment for completed work will be made. No alignment changes or abandonment shall take place without prior written notice from the Contracting Officer.

3.2 AS-BUILT SURVEYS

An as-built field survey shall be conducted after completion of construction to determine the final locations and elevations of all structures. Locations shall be shown using the same convention as the original contract drawings (typically stationing and offset from known centerline). If no convention is used in the contract drawings, locations shall be tied to at least 2 permanent landmarks. This information shall be included on the Contractor Record Drawings in Section 01780 CLOSEOUT SUBMITTALS.

3.2.1 Dredging As-builts

As-built drawings shall be required of all dredging located within Spring

Lake.

### 3.3 QUANTITY SURVEYS FOR MEASUREMENT AND PAYMENT

The Contractor shall perform quantity surveys in accordance with CONTRACT CLAUSE 52.236-16 QUANTITY SURVEYS--ALTERNATE I. Quantity surveys shall be completed for all features of work necessary to establish measurement for partial and final payments. Surveys shall be completed in enough detail to accurately determine quantities and verify the required section. The quantity surveys shall meet the following criteria:

- a. Complete initial surveys prior to commencement of construction of each feature, and prior to disturbance in the area.
- b. Space cross sections at 100 foot maximum intervals. Include additional cross sections as necessary to define the geometry.
- c. Each cross section from the survey notes shall be plotted at a scale of 1" = 10'.
- d. Provide a copy of the survey notes and cross sections to the Contracting Officer within 10 days after completion of the survey.
- e. Complete partial surveys as necessary to supplement payment requests.
- f. Complete final surveys upon completion of each feature.

The Contracting Officer may use the surveys for tolerance verification purposes.

-- End of Section --

SPRING LAKE ISLANDS EMP

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DIVISION 01 - GENERAL REQUIREMENTS

SECTION 01780

CLOSEOUT SUBMITTALS

**11/99**

PART 1 GENERAL

- 1.1 SUBMITTALS
- 1.2 As-Built Drawings
- 1.3 CONTRACTOR RECORD DRAWINGS
  - 1.3.1 Changes and Corrections
  - 1.2.6 Drawing Standards

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

-- End of Section Table of Contents --

SECTION 01780

CLOSEOUT SUBMITTALS

11/99

PART 1 GENERAL

1.1 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-11 Closeout Submittals

As-Built Drawings; G,GEN

Contractor record drawings showing final as-built conditions of the project.

1.2 As-Built Drawings

Paper prints and reproducible drawings will become the property of the Government upon final approval. Failure to submit final as-built drawings and marked prints, as required herein, will be cause for withholding payment due the Contractor under this contract. These drawings shall be furnished to the Contracting Officer within 30 days after the required contract completion date. Approval and acceptance of final as-built drawings shall be accomplished before final payment is made to the Contractor.

1.3 CONTRACTOR RECORD DRAWINGS

The Contractor shall maintain a separate set of marked-up full-scale contract drawings indicating as-built conditions. These drawings shall show all changes and revisions made up to the time the work is completed and accepted. These drawings shall be maintained in a current condition at all times until completion of the work and shall be available for review by Government personnel at all times. All variations from the contract drawings, for whatever reason, including those occasioned by modifications, optional materials, and the required coordination between trades, shall be indicated.

1.3.1 Changes and Corrections

The working and final as-built drawings shall show, but shall not be limited to, the following information:

- a. Correct grade, elevations, cross section, earthwork or structures if any changes were made from contract plans.
- b. Changes in details of design.

1.2.6 Drawing Standards

- a. Deleted items shall be indicated in red.
- b. Added items or changed locations shall be shown in green.
- c. Variations shall be shown in the same general detail utilized in the contract drawings.
- d. Revisions shall be shown on all drawings and details related to the changed feature.
- e. All markups shall be neat, clean and legible.
- f. Where contract drawings or specifications present options, only the option selected for construction shall be shown.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

-- End of Section --

SPRING LAKE ISLANDS EMP

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SECTION 02300

EARTHWORK

**01/02**

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  - 2.1.1 Satisfactory Materials
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PART 3 EXECUTION

- 3.1 CLASSIFICATION OF SOIL MATERIALS
- 3.2 BORROW MATERIAL
- 3.3 FOUNDATION SETTLEMENT AND DISPLACEMENT
  - 3.3.1 Measurements and/or Surveys
  - 3.3.2 Sudden Failure
  - 3.3.3 Postponement of Work Due to Settlement/Displacement
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  - 3.6.1 Placement Under Water
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- 3.9 TESTING

-- End of Section Table of Contents --

SECTION 02300

EARTHWORK  
01/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 422	(1963) Particle-Size Analysis of Soils
ASTM D 698	(2000a) Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft <sup>3</sup> ) (600 KN-m/m <sup>3</sup> )
ASTM D 1556	(2000) Density and Unit Weight of Soil in Place by the Sand-Cone Method
ASTM D 2487	(2000) Classification of Soils for Engineering Purposes (Unified Soil Classification System)
ASTM D 2488	(2000) Description and Identification of Soils
ASTM D 2922	(2001) Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth)

1.2 SUBSURFACE DATA

Reference the Physical Data clause in Section 00800 SPECIAL CONTRACT REQUIREMENTS.

PART 2 PRODUCTS

2.1 DEFINITIONS

2.1.1 Satisfactory Materials

Satisfactory materials shall include all soils except those classified in ASTM D2487 as Pt, OH or OL. Satisfactory material shall be free of ice, snow, frozen earth, organic matter, trash or debris.

2.1.2 Mud Flats Fill

Mud flats fill material shall meet the requirement for random fill.

2.1.3 Sand Berms

Sand berm material shall meet the requirements for granular fill.

2.2 MATERIALS

2.2.1 Granular Fill

Granular material shall meet requirements for satisfactory materials and shall contain not more than 5 percent by weight of material passing the No. 200 sieve.

2.2.2 Random Fill

Random fill shall meet requirements for satisfactory material.

2.2.3 Fine Fill

Fine fill shall meet the requirements for satisfactory materials and contain neither less than 40 percent nor more than 70 percent by weight of material passing the No. 200 sieve.

PART 3 EXECUTION

3.1 CLASSIFICATION OF SOIL MATERIALS

Classification of soil materials shall be performed by the Contractor in accordance with ASTM D 2488. The Contracting Officer reserves the right to revise the Contractor classifications. In the case of disagreement, the Contracting Officer's classification will govern unless the soils are classified in accordance with ASTM D 2487. Notwithstanding provisions of FAR 52.246-12 INSPECTION OF CONSTRUCTION, testing completed by the Contractor in conjunction with soil material classification will be considered incidental to the contract work.

3.2 BORROW MATERIAL

Borrow material shall be selected to meet the requirements and conditions of the particular fill or embankment for which it is to be used. Borrow material shall be obtained from the borrow areas shown on the drawings. Borrow material from the mandatory sources may be obtained without payment of royalties. Unless specifically provided, no borrow shall be obtained within the limits of the project site without prior written approval.

3.3 FOUNDATION SETTLEMENT AND DISPLACEMENT

Should the Contractor desire to make a claim for placing additional sand fill material, within the authorized limits, due to settlement and/or displacement of the foundation the Contractor shall notify the Contracting Officer of its desire at least two weeks before beginning construction of the islands. Notification shall include submitting for approval a plan showing the proposed type and arrangement of the settlement/displacement gages or borings to be used. On this plan, the Contracting Officer will mark the range over which the settlement/displacement measured by each gage(s) or boring(s) will apply. The Contractor shall at its own expense either: erect settlement/displacement gages prior to island construction; or have borings taken within 30 calendar days following completion of island construction. These gages shall be installed on the prepared

foundation at a point directly under the centerline of the planned island section prior to placing of fill material and shall be maintained during the entire remaining contract period.

#### 3.3.1 Measurements and/or Surveys

The Contractor shall take measurements and/or surveys to determine elevations on the settlement/displacement gages prior to placing fill material and again within 48 hours after completion of placement of the island fill at the sites of the gages, as required, in order to determine the settlement and displacement of the foundation. If, in the opinion of the Contractor, gages will not be effective, then the Contractor may use borings taken on the centerline of the island(s) to make this determination. All measurements, surveys, and borings will be verified by the Contracting Officer. Measurement of additional fill material placed by reason of settlement and/or displacement of the foundation shall be as follows:

1. The settlement/displacement measured at each gage or boring location will be considered to apply to the foundation area under the top of the island throughout the length of the settlement/displacement range indicated by the Contracting Officer on the approved plan in which the respective gage or boring is located.
2. The foundation settlement/displacement under the island slopes at each cross section within a settlement/displacement measurement range will be considered to vary uniformly from zero settlement/displacement at the island toes to a maximum settlement/displacement equal to the amount of settlement/displacement measured at the respective gage or boring location.

#### 3.3.2 Sudden Failure

In clearly established cases of sudden failure of the foundation, where gages were intended to be used and settlement/displacement is such as to destroy their utility, the settlement/displacement shall be determined by having borings taken near the gage location(s).

#### 3.3.3 Postponement of Work Due to Settlement/Displacement

Where settlement and/or displacement of the foundation develops to such an extent as to make it inadvisable, in the opinion of the Contracting Officer, to continue to add material, and, advisable in the Contracting Officer's opinion, to postpone until a considerably later date all attempts to bring that portion of the line to full grade and cross section, the Contracting Officer has the right to omit further work on such portion of the line, and to accept it as completed.

#### 3.4 SLIDES

In event of the sliding of any part of a island during construction operations, or after completion but prior to acceptance of such work, the Contractor shall upon written order of the Contracting Officer cutout and remove the slide to its original condition and then rebuild that portion of the island. In case the slide was caused through fault of the Contractor, the foregoing operations shall be performed without additional cost to the Government. In case the slide is caused through no fault of the Contractor, the required work will be paid for in accordance with the CONTRACT CLAUSE - CHANGES.

### 3.5 FOUNDATION PREPARATION

Each foundation area that is to have fill material placed upon it shall be cleared of woody vegetation materials that could prevent proper placement of island fill. Plant root systems may be left in place and intact. Plant trunks and stems that construction work can be built around and remain standing vertically through the completed island fill may be left in place in order to assist in the natural revegetation of the completed island fill. Each area where a settlement/displacement gage is placed shall be cleared of vegetation prior to the placement of the gage.

### 3.6 PLACEMENT

#### 3.6.1 Placement Under Water

Material deposited under water shall be placed in such a manner as to insure that soft material in the foundation will be forced progressively outward from the section and not be trapped within the base of the island. At no time shall frozen fill or placing of fill on frozen ground be permitted. The maximum drop of fill materials placed under water by mechanical dredging shall be 6 inches from the water surface.

#### 3.6.2 Effluent Water Quality

Effluent water quality monitoring during placement of material shall be in accordance with Section 02327 PLACEMENT OF DREDGE MATERIAL.

### 3.7 FINISHING

All areas covered by the project, including excavated and filled sections and adjacent transition areas, shall be uniformly smooth-graded. The finished surface shall be reasonably smooth, compacted, and free from irregular surface changes. The degree of finish shall be that ordinarily obtainable from blade-grader operations, except as otherwise specified. The surface of areas to be turfed shall be finished to a smoothness suitable for the application of turfing.

### 3.8 TOLERANCES

Unless shown or indicated otherwise, island construction shall conform to the following tolerances (plus and/or minus):

a. Island top elevations	+3 inches	-3 inches
b. Island interfaces between granular, random and fine fill materials	+4 inches	-4 inches
c. Island fine fill layer	+4 inches	-0 inches

Tolerances above grade may be revised at locations where, in the opinion of the Contracting Officer, such revisions will not impair the design or appearance of the island.

### 3.9 TESTING

Testing shall be performed by and at the expense of the Contractor. The Contracting Officer reserves the right to direct the location and select

SPRING LAKE ISLANDS EMP

the material for samples to be tested. The following amount of testing is the minimum and if, in the opinion of the Contracting Officer, acceptable gradations are not being obtained, additional testing shall be performed by the Contractor at no additional cost to the Government. Tests of materials which do not meet the contract requirements will not be counted as part of the tests required.

Schedule of Tests (Minimum)

a. Sieve Analysis (ASTM D 422)

1. Granular Fill from Spring Lake:

One test prior to placement; and one test per 50,000 cubic yards, or fraction thereof, for material placed (in place measure).

2. Fine Fill

One test prior to placement; and one test per 5,000 cubic yards, or fraction thereof, for material placed (in place measure).

3. Random Fill

No test required.

Results of tests shall be immediately submitted to the Contracting Officer.

-- End of Section --

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SECTION 02323

EXCAVATION OF DREDGE MATERIAL

**12/97**

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- 1.2 SUBMITTALS
- 1.3 DREDGED MATERIAL CHARACTERISTICS

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

- 3.1 SCOPE
- 3.2 LOCATION
- 3.3 TOLERANCES

-- End of Section Table of Contents --

SECTION 02323

EXCAVATION OF DREDGE MATERIAL  
12/97

PART 1 GENERAL

The work under this section includes excavating and transferring dredge material from the borrow areas indicated on the drawings to the island sites to be constructed. The following items of related work are covered under other sections:

1. Dredging: SECTION 02325 DREDGING

2. Dredged material placement/relocation: SECTION 02327 PLACEMENT OF DREDGE MATERIAL

1.1 DEFINITIONS

1.1.1 Definitions

Excavating and Filling. All excavation, except for main navigation channel dredging, will be unclassified. The Contractor shall perform excavation of every description. Excavation consists of the removal of material between the existing lines and grades shown to the new required lines and grades. The Contractor shall be responsible for transporting and placement of excavated dredged fill material and channel dredging material into the designated permanent island construction sites. Unsuitable material or excess material shall be left in-place or wasted only as directed. Excavation beyond the limits shown shall be performed only as directed.

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Excavation Plan; G,COR

Methods of excavation and material handling including types of equipment proposed for the separable operations.

1.3 DREDGED MATERIAL CHARACTERISTICS

The Contractor is responsible for determining the character of the existing material to the extent necessary for its own purposes before commencing excavation work. Borings indicate the general nature for the mandatory and secondary borrow areas shown on the drawings. The contractor shall make its own determination as to the nature of the material. Past projects have encountered trees, stumps and other debris. The Contractor shall implement a method for removing and disposing of debris. Stumps and trees

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encountered in Spring Lake may be placed adjacent to the dredge cut on the downstream side. All other material that can not be transported hydraulically shall be disposed of as debris and waste in accordance with SECTION 01000 GENERAL.

The borrow area materials may contain obstructions including but not limited to stones, riprap, rubble, wire rope, sand bags, stumps & trees and other debris.

### PART 2 PRODUCTS (Not Applicable)

### PART 3 EXECUTION

#### 3.1 SCOPE

Excavation, regardless of material encountered, shall be performed to the lines and grades indicated. Excavated material shall be transported to and placed in fill areas of the designated island placement site within the limits shown.

#### 3.2 LOCATION

The Spring Lake Islands are to be located between River Miles 741.0 and 743.0 (approx.) in lower pool 5 of the Mississippi River as shown.

#### 3.3 TOLERANCES

Unless required otherwise, tolerances for dredging shall be plus or minus 8 inches, except for areas of access dredging where tolerances shall be plus 6 inches and minus zero inches.

-- End of Section --

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SECTION 02325

DREDGING

**03/98**

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-- End of Section Table of Contents --

SECTION 02325

DREDGING

03/98

PART 1 GENERAL

The work of this section includes the basic and optional work items consisting of dredging in Spring Lake for island construction and the Mississippi River channel for channel maintenance purposes. Specific requirements for hydraulic dredging, if used, are included in this section.

1.1 DEFINITIONS

a. Plant is defined as all marine and land based equipment necessary to accomplish the work as outlined in these specifications.

b. "Cuts" and "cut areas" are defined as those areas on the drawings in which dredging is to be accomplished.

c. Project depth is the neatline excavation measured in feet below Low Control Pool (LCP).

1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced.

U. S. ARMY CORPS OF ENGINEERS, St. Paul District (CEMVP)

CEMVP (1996) Channel Maintenance Management Plan

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Dredging Plant;

The Contractor shall submit information on the following items to be used on this contract:

1. Dredge: Name, length, beam, draft, and mobilization speed.
2. Booster pumps: horsepower, diameter, and location.
3. Available pipe: length of each diameter & material combination.
4. Cutter: type, horsepower, and ladder length.
5. Tenders.
6. Spuds.

SD-02 Shop Drawings

Pipeline;

Indicate pipeline location, type (aluminum or HDPE), and portions floating or submerged.

SD-06 Test Reports

Daily Report Forms

The Contractors daily report forms shall be supplied to the Contracting Officer on a regular basis as directed (this may include sending daily facimiles of the previous day's report to the Contracting Officer). Frequent transmittal of daily reports do not need to follow formal submittal procedures. The Contractor's standard form may be substituted, provided it contains the basic information indicated on the attached Sample Daily Report Form. This report is in addition to the Daily Contractor's Quality Control (CQC) Report.

1.4 ORDER OF WORK

The Contracting Officer will direct the Contractor on the order of work. The Government reserves the right to change the order of work at any time.

1.4.1 Optional Bid Items

The contractor must have adequate equipment such as second plant or additional pipeline and boosters available for immediate mobilization to perform the navigation channel dredging. If the dredge and pipeline is substantially operational, the Contractor shall be prepared to commence channel dredging within 7 days after receiving the Contracting Officer's order, except under emergency or imminent closure conditions as described in paragraph 1.4.1.1 of this section. See Section 01270 MEASUREMENT AND PAYMENT.

1.4.1.1 Criteria for Scheduling Optional Work

Scheduling of the channel dredging is dependent on the amount of shoaling. The Corps of Engineers Channel Maintenance Management Plan defines the amount of shoaling that comprises "imminent closure" or "emergency closure." If either of these conditions is determined to exist, the Contracting Officer will direct the Contractor to commence channel dredging within 72 hours.

1.5 MATERIAL TO BE REMOVED

1.5.1 Spring Lake

The material to be removed from the mandatory borrow areas in Spring Lake consists primarily of fine to medium sand with some gravel and silt to fine material. Stumps, trees and other miscellaneous debris are expected to be encountered.

1.5.2 Main Navigation Channel

The material to be removed from the main navigation channel maintenance cuts consists of shoaling composed primarily of fine to medium sand with

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some gravel and silt. Stumps, trees and other miscellaneous debris are occasionally encountered.

### 1.6 GENERAL REQUIREMENTS

- a. Dredged material shall not be rehandled in the water.
- b. Interference with Navigation. The Contractor shall minimize interference with the use of channels and passages by recreational watercraft. The dredging equipment and pipeline shall not interfere with barge traffic. Any dredge pipeline crossing the main channel of the river shall be submerged, or broken to allow passage of each commercial or government tow boats without delay.
- c. Spring Lake Access. The Contractor shall provide recreational boating access to the Spring Lake area at all times.

## PART 2 PRODUCTS

### 2.1 PLANT

Plant shall be subject to the inspection of the Contracting Officer at all times. The Contractor is responsible for supervision and direction of dredging operations, including the safe and efficient operation of plant. The Contractor shall maintain the plant, scows, coamings, barges, pipelines, and associated equipment to meet the requirements of the work.

### 2.2 PIPELINES

- a. Submerged pipeline shall rest on the channel bottom, and the top of the pipeline and any anchor securing shall be no higher than 12 feet below low control pool if located in the main navigation channel.

To provide recreational boating access to the Spring Lake area and backwaters, a 100-foot section of the pipeline shall be submerged with at least 4 feet of water over the top of the pipeline. Lights will be placed on the pipeline on both sides of the submerged section extending a minimum of 100 feet. The pipeline will be conspicuously marked at intervals in the backwater area to warn boaters.

- b. If submerged pipeline is of buoyant or semi-buoyant material, the Contractor shall securely anchor the pipe to prevent it from lifting, under any condition, off the bottom. Pipelines shall not be permitted to fluctuate between the water surface and the channel bottom, or lie partially submerged.

- c. Floating pipeline shall be visible from a distance of 2000 feet at the water line.

### 2.3 NAVIGATION WARNINGS

The Contractor shall furnish and maintain navigation warning signs along the pipeline. Submerged pipeline shall be marked.

## 2.4 METHOD OF COMMUNICATION

### 2.4.1 Communication between Contractor's Plant

The dredge and tenders shall be equipped with radios to provide for communication between the dredge operator, tender and other vessels. Provide a system of communication between the dredge crew and the crew at the island placement areas. A portable two-way radio is acceptable.

### 2.4.2 Communication with Marine Traffic

Floating plant utilized to complete the contract project work shall be equipped with radios to provide for communications between the Contractor's floating plant and other passing floating vessels. The Contractor shall monitor marine radio channels 13 and 16 and provide to passing floating vessels timely information on delays and other situations created by its work, and recommended passing instructions.

## 2.5 INSPECTION BOAT

When required, provide transportation for the Contracting Officer and inspectors to and from the island construction area and between the dredging plant and adjacent points on shore for inspecting, supervising and surveying the work. The boat shall conform to the applicable requirements of the Corps of Engineers Safety and Health Requirements Manual referenced in the CONTRACT CLAUSES. The boat shall be available for use whenever the Contractor is performing work throughout the life of the contract. The boat shall be available for use by the Government or its assigns to obtain samples for the water quality monitoring program.

## PART 3 EXECUTION

The Contractor shall layout the cut in accordance with the pre-dredge survey drawings. The Contractor is required to dredge the entire area within the defined cut that is shallower than the specified dredging depth, (unless otherwise shown).

### 3.1 NAVIGATION BUOYS

The Contractor shall move navigation buoys as necessary to avoid damage during dredging operation. The buoys shall be replaced to mark the newly dredged channel. Other buoys in the immediate vicinity of the dredging operations may be required to be moved to adequately delineate the navigating area.

### 3.2 PIPELINES

a. Pipeline Operation and Repair. All pipelines shall be kept in good condition at all times. If a leak occurs in the discharge pipeline, immediately discontinue using the line until leaks are repaired. Immediately notify the Contracting Officer's Representative of any pipeline leaks. Remove material placed due to leaks or breaks.

b. Submerged Pipe. The Contractor shall be responsible for maintaining adequate horizontal and vertical clearances for submerged pipelines. The submerged pipe shall be monitored to ensure anchorage. All anchors and related material shall be removed when the submerged pipe is removed.

### 3.3 SAFETY OF STRUCTURES

The prosecution of work shall ensure the stability of piers, bulkheads, and other structures lying on or adjacent to the site of the work, insofar as structures may be jeopardized by dredging operations.

#### 3.3.1 Utilities

The Contractor shall identify pipelines and other utilities in the vicinity of the work and insure that adequate measures are taken to avoid damage or disruption of those facilities. The government does not warrant that utility information shown on the drawings is current or complete.

### 3.4 PLANT REMOVAL

Upon completion of the work, promptly remove plant, including ranges, buoys, piles, and other markers or obstructions.

-- End of Section --

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**SAMPLE DAILY REPORT FORM**

CONTRACTOR \_\_\_\_\_ DATE \_\_\_\_\_

PROJECT \_\_\_\_\_ REPORT # \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ POOL EL. \_\_\_\_\_

WEATHER \_\_\_\_\_

DREDGING LOCATION \_\_\_\_\_

FILLING LOCATION \_\_\_\_\_

**OPERATING PIPELINE LENGTH:**

Floating \_\_\_\_\_

Submerged \_\_\_\_\_

Shore \_\_\_\_\_

Filling \_\_\_\_\_

Total \_\_\_\_\_

**MATERIAL TYPE:** Sand \_\_\_\_\_% Silt \_\_\_\_\_% Gravel \_\_\_\_\_% Rock \_\_\_\_\_%

**COMPILATION OF QUANTITIES:**

Daily: Volume \_\_\_\_\_ CY Area \_\_\_\_\_ SY

Cumulative Total: Volume \_\_\_\_\_ CY Area \_\_\_\_\_ SY

**NON-EFFECTIVE TIME:**

a) Changes in Discharge Line \_\_\_\_\_ hrs. \_\_\_\_\_ min.

b) Passing Vessels \_\_\_\_\_ hrs. \_\_\_\_\_ min.

c) Debris Removal \_\_\_\_\_ hrs. \_\_\_\_\_ min.

d) Suspension of work \_\_\_\_\_ hrs. \_\_\_\_\_ min.

e) Disposal Site Delay \_\_\_\_\_ hrs. \_\_\_\_\_ min.

f) Other (explain in remarks) \_\_\_\_\_ hrs. \_\_\_\_\_ min.

**OPERATING TIME:**

	HOURS	PERCENT
TODAY	_____	_____
CUMULATIVE	_____	_____

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SECTION 02327

PLACEMENT OF DREDGE MATERIAL

**12/97**

PART 1 GENERAL

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- 1.2 EFFLUENT WATER QUALITY

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

- 3.1 GENERAL
- 3.2 RELOCATION/PLACEMENT SITE ISLAND E3
- 3.3 PLACEMENT OF MATERIAL
  - 3.3.1 Direction of Work
  - 3.3.2 Runoff and Sluice Water
- 3.4 FINISHED EXCAVATION, FILLS, AND EMBANKMENTS
- 3.5 PROTECTION

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SECTION 02327

PLACEMENT OF DREDGE MATERIAL  
12/97

PART 1 GENERAL

The work under this section includes filling, grading and other related work for placement of all excavated and dredged material for both the basic items and the optional items of work. The following items of related work are covered under other sections:

1. Earthwork: SECTION 02300 EARTHWORK
2. Excavation: SECTION 02323 EXCAVATION
3. Dredging: SECTION 02325 DREDGING

1.1 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Placement Plan; G, COR

The plan shall indicate the horizontal and vertical limits of temporary work, such as containment berms. The plan shall have a one inch to 100 foot minimum scale, with five foot contours. The plan shall describe the means by which the Contractor plans to contain all excavated material, dredged material, sluice and runoff water, sediment retention basins and show the discharge point(s) for random and fine material within the specified limits.

Water Quality Plan; G, COR

Water quality testing and monitoring plan in accordance with Paragraph: EFFLUENT WATER QUALITY

1.2 EFFLUENT WATER QUALITY

Any site(s) used for placement of dredged material by hydraulic dredging and the hydraulic carriage water effluent is discharged to public waters, water quality limitations must be met in accordance with TABLE A - *Water Quality Limitations, Monitoring and Reporting Requirements for Granular Fill Placement for Spring Lake Islands in Pool 5* and TABLE B - *Water Quality Limitations, Monitoring and Reporting Requirements for Carriage Water Discharges for Random Fill and Fine Fill Placement or Discharges from Confined Material Containment Cells for the Spring Lake Islands Project in Pool 5*. Both tables are included at the end of this section. The Contractor is responsible for all sampling, testing and reporting of water

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quality limits. Carriage water discharge shall cease immediately during periods when effluent water quality limits are obviously not being achieved.

### PART 2 PRODUCTS (Not Applicable)

### PART 3 EXECUTION

#### 3.1 GENERAL

Placement of material to build the Spring Lake Islands and Island E3 shall be in accordance with all permits obtained by the Government.

#### 3.2 RELOCATION/PLACEMENT SITE ISLAND E3

Access dredging will not be allowed to the designated island E3 relocation/placement site. Access shall be limited to that shown on the drawings.

#### 3.3 PLACEMENT OF MATERIAL

##### 3.3.1 Direction of Work

The Contracting Officer may require the specific placement and movement of the discharge end and specific operation of tractor equipment to effect a proper disposition that is consistent with environmental constraints and permits. When the parameters of the operation are established, the absence or presence of the Contracting Officer does not relieve the Contractor of the responsibility to maintain a proper disposition operation. The Contracting Officer is authorized to stop operations if the placement operation is not meeting permit requirements.

##### 3.3.2 Runoff and Sluice Water

Runoff and sluice water from dredging of fine material shall be contained within the limits of the island placement site(s) until it meets water quality standards in paragraph: EFFLUENT WATER QUALITY, before it can be discharged to public waters.

#### 3.4 FINISHED EXCAVATION, FILLS, AND EMBANKMENTS

The Contractor shall finish excavation, fills and island construction in all areas covered by the contract project documents. The finished surface shall be reasonably smooth, compacted, and free from irregular surface changes suitable for the application of turbing materials (the degree of finish required is that ordinarily obtainable from blade-dozer operations).

#### 3.5 PROTECTION

The Contractor shall protect newly graded areas from traffic and from erosion, and shall repair settlement and/or washing away of placed fill material that may occur from any cause, prior to acceptance, and re-establish grade to the required elevations and slopes. All work shall be conducted in accordance with the environmental protection requirements of the contract.

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TABLE A

Water Quality Limitations, Monitoring and Reporting Requirements  
for Granular Fill Placement for Spring Lake Islands in Pool 5

## WATER QUALITY LIMITATIONS:

<u>Period</u>	<u>DO (mg/L)<sup>1</sup> (daily min.)</u>	<u>TSS (mg/L)<sup>2</sup> (daily max.)</u>
Mar-Nov	5.0	400

## WATER QUALITY MONITORING REQUIREMENTS DURING PERIODS OF CARRIAGE WATER DISCHARGE:

<u>Site</u>	<u>Period</u>	<u>Parameters</u>	<u>Sampling Frequency (No./week)</u>
Background <sup>3</sup> (above project area)	Apr-Nov	DO, Temp., TSS	1
Discharge <sup>4</sup> (effluent plume)	Apr-Nov	DO, Temp., TSS	3

## Notes:

- <sup>1</sup> To be met at a distance of 500 feet from the site of carriage water discharge in the effluent return. If background concentrations are less than 5.0 mg/L, the background concentrations shall be met.
- <sup>2</sup> To be met at a distance of 500 feet from the site of carriage water discharge in the effluent return. If background concentrations are greater than this value, the background concentrations shall be met.
- <sup>3</sup> Background samples shall be collected at mid-depth in Belvidere Slough approximately 500 feet upstream of the Upper Spring Lake Landing shown on the drawings.
- <sup>4</sup> Identify Island that is being constructed. Samples shall be collected at mid-depth and be representative of the carriage water effluent plume and shall be collected 500 feet below the point of discharge. The actual point of sampling may vary depending upon point discharge and water current direction. Field notes shall include an approximate bearing and distance from the point of discharge to the sampling site. Samples shall be collected after a minimum of two hours of discharge to allow the effluent plume to establish itself.

## Definitions:

DO	=	dissolved oxygen
NH3-N	=	ammonia nitrogen
TSS	=	total suspended solids
Temp.	=	water temperature

SPRING LAKE ISLANDS EMP

REPORTING:

The Contractor shall provide copies of all sampling results required above on a weekly basis to the Contracting Officer, the Wisconsin Department of Natural Resources (WDNR), and the U.S. Fish and Wildlife Service (USFWS). The Contractor shall also notify the Contracting Officer, the WDNR, and the USFWS in writing within 24 hours of each test result that exceeds the water quality limitations described herein. Furnish these reports to:

Jeff Janvrin  
WDNR  
3550 Mormon Coulee Road  
La Crosse, WI 54601

Sharonne Baylor  
USFWS - Winona  
51 East 4th Street, Room 203  
Winona, MN 55987

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TABLE B

Water Quality Limitations, Monitoring and Reporting Requirements  
for Carriage Water Discharges for Random Fill and Fine Fill Placement or  
Discharges from Confined Material Containment Cells for the Spring Lake  
Islands Project in Pool 5

WATER QUALITY LIMITATIONS:

Period	DO (mg/L) <sup>1</sup> (daily min.)	Total NH <sub>3</sub> -N (mg/L) <sup>2</sup> (daily max.)	TSS (mg/L) <sup>2</sup> (daily max.)
Mar-Nov	5.0	4.4	250

WATER QUALITY MONITORING REQUIREMENTS DURING PERIODS OF CARRIAGE WATER  
DISCHARGE:

<u>Site</u>	<u>Parameters</u>	<u>Sampling Frequency (No./week)</u>
Background <sup>3</sup> (above project area)	DO, Temp., TSS	1
Discharge <sup>4</sup> (effluent plume)	DO, Temp.	3
Carriage Water Discharge Including Containment Cell Effluents <sup>5</sup> (effluent outfall)	DO, Temp., pH, TSS, NH <sub>3</sub> -N  Settling Test <sup>6</sup>	3  Daily

Notes:

- <sup>1</sup> To be met at a distance of 500 feet from the site of carriage water discharge plume. If background concentrations are less than 5.0 mg/L, the background concentrations shall be met.
- <sup>2</sup> To be met at the point of carriage water discharge or outfall structure if discharge pipe is submerged. The sample shall be representative of the discharge. When mud flats are used to contain fines, the limit shall be met at the point of discharge from the mud flat containment cells to Spring Lake.
- <sup>3</sup> Background samples shall be collected at mid-depth in Belvidere Slough approximately 500 feet upstream of the Upper Spring Lake Landing shown on the drawings.
- <sup>4</sup> Samples shall be representative of the carriage water effluent plume and shall be collected 500 feet from the point of discharge. The actual point of sampling may vary depending upon point discharge and water current direction. Field notes shall include an approximate bearing and distance from the point of discharge to the sampling site. Samples shall be collected after a minimum of two hours of discharge to allow the effluent plume to establish itself.

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- 5 Samples shall be representative of the carriage water discharge. Samples shall be collected at the point(s) of discharge or outfall structure if a submerged outfall pipe is used.
- 6 A daily solid settling test shall be conducted during periods of carriage water discharge. The test involves placing 100 ml of carriage water into a 100 ml graduated cylinder and acidifying to a pH of less than 3.0. The volume of sediment accumulating at the bottom of the cylinder after 15 minutes of settling shall be recorded.

Definitions:

DO	=	dissolved oxygen
NH3-N	=	ammonia nitrogen
TSS	=	total suspended solids
Temp.	=	water temperature

REPORTING:

The Contractor shall provide copies of all sampling results required above on a weekly basis to the Contracting Officer, the Wisconsin Department of Natural Resources (WDNR), and the U.S. Fish and Wildlife Service (USFWS). The Contractor shall also notify the Contracting Officer, the WDNR, and the USFWS in writing within 24 hours of each test result that exceeds the water quality limitations described herein. Furnish these reports to:

Jeff Janvrin  
WDNR  
3550 Mormon Coulee Road  
La Crosse, WI 54601

Sharonne Baylor  
USFWS - Winona  
51 East 4th Street, Room 203  
Winona, MN 55987

-- End of Section --

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SECTION 02388

STONE PROTECTION (RIPRAP)

**01/02**

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SECTION 02388

STONE PROTECTION (RIPRAP)

01/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM C 127	(2001) Density, Relative Density (Specific Gravity), and Absorption of Coarse Aggregate
ASTM C 136	(2001) Sieve Analysis of Fine and Coarse Aggregates
ASTM C 295	(1998) Petrographic Examination of Aggregates for Concrete
ASTM D 4791	(1999) Flat Particles, Elongated Particles, or Flat and Elongated Particles in Coarse Aggregate
ASTM D 4992	(1994; R 2001) Evaluation of Rock to be Used for Erosion Control
ASTM D 5312	(1992; R 1997) Evaluation of Durability of Rock for Erosion Control Under Freezing and Thawing Conditions
ASTM D 6092	(1997) Specifying Standard Sizes of Stone for Erosion Control
ASTM D 6825	(2002) Placement of Riprap Revetments

CORPS OF ENGINEERS (COE)

EM 1110-2-2302	(1990) Construction with Large Stone
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NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST)

NIST HB 44	(1997) NIST Handbook 44: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices
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1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office

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that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

### SD-01 Preconstruction Submittals

Material Sources; G, GT

The Contractor shall designate in writing only one source or one combination of sources from which he proposes to furnish stone. The Contractor shall state in writing methods of processing and handling riprap, and shall notify the Contracting Officer when production methods are changed.

### SD-03 Product Data

Geogrid Data;

Catalog cuts or technical data sheet shall be submitted for the geogrid showing that the product meets the specifications.

### SD-06 Test Reports

Gradation Test;

Gradation Test Results for riprap. Riprap gradation testing results shall be submitted on the WORKSHEET FOR GRADATION ANALYSIS OF RIPRAP and the gradation curve (ENG FORM 4055). A blank copy of each form is included at the end of this section.

### SD-07 Certificates

Certified Weight Scale Tickets;

Copies of all certified weight scale tickets shall be furnished to the Contracting Officer at a frequency as directed. The tickets do not need to be formally submitted through the submittal process.

## PART 2 PRODUCTS

### 2.1 STONE SOURCES AND EVALUATION

Stone and aggregate materials shall be produced from the sources listed in Section 00830 ATTACHMENTS. If the Contractor proposes to furnish materials from a source not listed, the Government Geologist will make such investigations and evaluations as necessary to determine whether or not materials with acceptable durability can be produced from the proposed source. The rock supplied shall be produced from one rock formation to provide a product of uniform appearance. The Contractor shall not supply rock from various formations, or mix field-stone with quarried rock, unless approved by the Contracting Officer. It is the Contractor's responsibility to determine that the stone source or combination of sources selected is capable of providing the quality, quantities and gradation needed and at the rate needed to maintain the scheduled progress of the work.

#### 2.1.1 Government Provided Rock Borrow Site

The drawings indicate an mandatory source of approximately 3,000 cubic yards of rock borrow material which the Contractor shall use for the

Wildlife Loafing Structures only. Riprap from the Government provided rock borrow site is not required to meet the gradation requirements at the end of this section. The rock borrow is located on the Lock and Dam 5 Dike in an area inaccessible to the river. Dredging an access to the rock borrow site will not be permitted. The rock borrow would have to be loaded and transported to a location accessible to the river. The Contractor will be responsible for any damage to the dike caused by loading and/or transporting the rock borrow material and will be required to repair and/or restore the dike to its original pre-project condition. The Contractor must keep the security gate at the end of the dike locked at all times or provide a security person to check vehicles entering or existing. The point of contact for this rock borrow site is: Daniel J. Schmidt at Lock and Dam No. 5, Telephone: (507) 689-2101.

#### 2.1.2 Alternate Sources

a. Evaluation by Site Inspection. If the Contractor proposes to furnish stone from an unlisted source, the Government will evaluate the alternate source and reply within 30 days. A quarry investigation shall be performed by a Government geologist or engineer. If the source is an undeveloped quarry or if the operation has been dormant for more than one year such that the quarry face is weathered, the Contractor shall expose fresh rock for 20 feet horizontally and for the full height of the face proposed for production, prior to the field evaluation. The Government will consider service records for stone of a similar size, placed in a similar thickness and exposed to weathering under similar conditions as are anticipated for this contract. The Government may choose to accept the source based on rock classification, geologic evaluation, and service records show that the stone is durable to the satisfaction of the Government.

b. Evaluation by Test Data. If sufficient information is not available, the Government will reconsider the alternate source if evaluation is supplemented by sampling and testing. This will require an additional 60 day evaluation period. If the Contractor wishes to pursue the alternate source, the Government will notify the Contractor of required testing and evaluation criteria. Criteria for acceptance will consider criteria in EM 1110-2-2302, but will also consider characteristics of rock found in nearby quarries. Some common test procedures that may be considered include:

- Unit Weight and Absorption (ASTM C 127).
- Petrographic Examination (ASTM C 295 and ASTM D 4992).
- Resistance to Freezing and Thawing (ASTM D 5312).

c. Sampling and Testing. Samples from alternate sources shall be taken by a representative of the quarry under the supervision of the Contracting Officer. Information provided with the samples shall include the location and stratigraphy within the quarry from which the sample was taken. The Contractor shall ship the samples to a laboratory identified by the Contracting Officer. The Government will be responsible for testing costs associated with one quarry per project; and the Contractor shall be responsible for testing costs for additional sources.

#### 2.1.3 Acceptance of Materials

Acceptance of a source of stone is not to be construed as acceptance of all material from that source. The right is reserved to reject materials from certain localized areas, zones, strata, or channels, when such materials are unsuitable for stone as determined by the Contracting Officer. The Contracting Officer also reserves the right to reject individual units of

produced specified materials in stockpiles at the quarry, all transfer points, and at the project construction site when such materials are determined to be unsuitable.

## 2.2 RIPRAP

Riprap gradation shall meet the requirements for R40 riprap indicated on the attached ENG FORM 4055. The stone shall be well graded within the limits specified.

### 2.2.1 General

All stone shall be durable material. Stone for riprap shall have a specific gravity not less than 2.55. Stone shall be of a suitable quality to ensure permanence in the structure and in the climate in which it is to be used. It shall be free from cracks, blast fractures, bedding, seams and other defects that would tend to increase its deterioration from natural causes. A hairline crack that is defined as being detrimental shall have a minimum width of 4 mil and shall be continuous for one-third the dimension of at least two sides of the stone. The stone shall be clean and reasonably free from soil, quarry fines, and shall contain no refuse. Any foreign material adhering to or combined with the stone as a result of stockpiling shall be removed prior to placement. The maximum aspect ratio (greatest dimension:least dimension) of any piece of stone for size ranges shall be not greater than 3:1 when measured across mutually perpendicular axis. ASTM D 4791 shall be used as a guide to perform the test.

### 2.2.2 Production

Riprap shall be handled and selectively loaded onto trucks in a manner to avoid segregation and provide a distribution of stone sizes consistent with the gradation band and test samples. Each truckload shall be representative of the gradation requirements.

## 2.3 GEOGRIDS

### 2.3.1 Geogrid Reinforcement

Geogrid shall be a geosynthetic manufactured for reinforcement applications. The geogrid shall be a regular network of integrally connected polymer tensile elements. The geogrid structure shall be dimensionally stable and able to retain its geometry under manufacture, transport and installation. The geogrid shall be manufactured with 100% virgin resin consisting of polyethylene, polypropylene or polyester and with a maximum of 5% in-plant regrind material. Polyester resin shall have a minimum molecular weight of 25,000 and a carboxyl end group number less than 30. Polyethylene and polypropylene shall be stabilized with long term antioxidants.

### 2.3.2 Geogrid Properties

The geogrid shown in the approved shop drawing shall meet the long term design strength requirements used in the design and shall meet the properties listed in Table 2. The geogrid strength requirements represent minimum average roll values in the machine direction.

**TABLE 2 - GEOGRID PROPERTIES**

<u>PROPERTY</u>	<u>REQUIREMENT</u>	<u>TEST DESIGNATION</u>
Tensile Strength at 5 % Strain	4,000 lbs/ft	ASTM D 6637

The Cross Machine dimension of aperture shall be less than or equal to three (3) inches. The Machine direction dimension of aperture shall be less than or equal to ten (10) inches.

#### 2.4 SOURCE QUALITY CONTROL

Gradation tests shall be performed by the methods and at the frequency listed below. A satisfactory gradation test shall be obtained prior to any hauling and delivery of materials. All tests, including failing tests shall be submitted. Tests performed on material which do not meet gradation and shape requirements will not be counted as part of the tests required. The Contracting Officer shall be informed immediately of test results and draft copies of test results shall be furnished at the Contracting Officers request.

##### 2.4.1 Sampling Requirements

The Contracting Officer shall direct the time and location of sampling, unless waived. Samples shall be taken from stockpiles or loaded trucks, and not directly from conveyers or chutes.

##### 2.4.2 Riprap Gradation Testing

a. Notification. The Contracting Officer shall be informed 24 hours before each riprap test.

b. Testing Frequency. At least 1 gradation test shall be performed per 5,000 tons.

c. Sample Size. The sample shall have a minimum gross weight not less than 25 times the maximum stone size in the specified gradation ( $25 * W_{100}$ ).

##### 2.4.2.1 Riprap Test Method A

Test method A shall consist of weighing all stones larger than 5 pounds in a sample. Five to seven weight classes shall be selected within the range of stone sizes. Each stone shall be weighed and recorded on the Work Sheet for Gradation Analysis of Riprap Method A; and the calculations on the worksheet shall be performed and recorded. A plot of the gradation shall be completed on ENG FORM 4055 in accordance with accepted practice for soil and aggregate gradations.

##### 2.4.2.2 Riprap Test Method B

Test method B shall consist of separating the stones into 5 to 7 piles, ordered by size. The sample shall be separated on a clean, hard surface that is free of smaller stones that could become mixed with the sample. The stones shall be visually screened to place them into appropriate piles.

All stones shall be separated and placed into a pile before weighing. After separating, the smallest and largest rock in each pile shall be weighed and recorded. The stones shall be adjusted as necessary so that

the weight classes do not overlap. After adjustment is adequate and weight classes have been established, each pile of stone shall be weighed and recorded on the Work Sheet for Gradation Analysis of Riprap Method B; and the calculations on the worksheet shall be performed and recorded. A plot of the gradation shall be completed on ENG FORM 4055 in accordance with accepted practice for soil and aggregate gradations.

## 2.5 STOCKPILES

Stockpiles shall be formed by a series of layers or truckload dumps, where the rock essentially remains where it is placed. Subsequent layers shall be started 10 feet from the edge of the previous layer so that the rock will not roll down the edges of the pile. Any stone which has become contaminated with soil or refuse shall not be put into the work unless the contaminating material has been removed prior to placement.

## PART 3 EXECUTION

Riprap shall generally be placed in general accordance with ASTM D 6825. Where discrepancies occur, this specification shall govern.

### 3.1 CONSTRUCTION TOLERANCES

Work shall generally meet the required elevations, slope and grade; and the outer surfaces shall be even and present a neat appearance.

a. Subgrades. Areas on which stone protection will be placed shall be graded and/or dressed to conform to cross sections shown on the contract drawings within 6 inches above or below the neat lines. The surface shall be reasonably smooth to match tolerances normally obtained by rough grading with bladed equipment. For subaqueous construction in greater than 3 feet of water, the tolerance shall be 6 inches.

b. Layer Thickness. The layer thickness tolerance shall be plus 8 inches or minus 4 inches. Any layers found to be less than 80% of the specified thickness shall be corrected. This tolerance shall only be exceeded on isolated spot checks, and if the tolerance is commonly exceeded, the Contractor shall change construction methods to improve the quality control. If it is necessary to estimate riprap quantities for changes, the volume shall be based on neat line dimensions and the plan dimension for thickness. A conversion factor of 1.5 tons/CY shall be used to determine quantity requirements, unless otherwise directed by the Contracting Officer.

c. Surface Tolerances. The finished surface tolerance above the neatline shall generally not deviate from the lines and grades shown by more than half (1/2) the average stone dimension of the gradation range. Riprap that has a rough and uneven surface shall be reworked by hand to stabilize stones that wobble and are out of tolerance, except where the Contracting Officer approves use of equipment. Rearranging of individual stones shall be required to the extent necessary to obtain a well-graded distribution of stone sizes.

### 3.2 FOUNDATION PREPARATION

Foundation areas shall be excavated or filled to the lines and grades shown. Filling shall be with earth similar to the adjacent material and shall be well compacted. Immediately prior to placing riprap, the prepared subgrade will be inspected by the Contracting Officer unless waived; and no

material shall be placed thereon until that area has been approved.

### 3.3 PLACEMENT OF GEOGRID

Geogrid shall be placed over the logs as shown on the drawings. Geogrid shall be a minimum of eight feet in width perpendicular to the length of the logs, without any splices.

### 3.4 PLACEMENT OF RIPRAP

#### 3.4.1 Constructing Rock Groins, Vanes and Slope Protection

Upon completion of placing a section of granular fill material for island construction, the Contractor shall construct the rock groins, vanes or slope protection for that island within 30 days. In no case shall any island, or part thereof, go unprotected over the winter.

#### 3.4.2 Layer Requirements

Riprap shall be placed in a manner which will produce a well-graded mass of rock with the minimum practicable percentage of voids. The large stones shall be well distributed. The finished riprap shall be free from objectionable pockets of small stones and clusters of larger stones.

#### 3.4.3 Construction Methods

Unsegregated stone shall be placed in a systematic manner. Riprap shall be placed to its full course thickness in one operation and in such manner as to avoid displacing underlying material. Placement shall typically begin at the bottom of the area to be covered and continue up slope. Subsequent loads of material shall be placed against previously placed material in such a manner as to ensure a relatively homogenous mass. Final finish of slope shall be performed as the material is placed.

Placing riprap in layers will not be permitted. Placing riprap by dumping it into chutes, or by any method likely to cause segregation of the various sizes, shall not be permitted. Placing riprap by dumping it at the top of the slope and pushing it down the slope shall not be permitted. No equipment shall be operated directly on the completed stone protection system. Dump trucks shall be equipped with bottom hinged tailgates if rock is directly placed into position with the trucks.

#### 3.4.4 Rockfill Placement on Geogrid

Rockfill shall be placed over the geogrid by methods that do not tear, puncture, or reposition the geogrid. Equipment shall be operated so as to minimize the drop height of the stone without contacting and damaging the geogrid. Generally this will be about 1 foot of drop from the bucket to the placement surface. Rockfill shall be placed so that stones do not roll downhill.

#### 3.4.5 Riprap Placement in Water

Riprap to be placed under water shall be placed in a systematic manner so as to ensure a continuous uniform layer of well-graded stone of the required thickness. Riprap to be placed under water shall be placed with a drop height less than 2 feet. Riprap shall not be cast across the surface of the water. The equipment shall be capable of reaching the placed material to monitor the water depth and surface coverage.

### 3.5 MAINTENANCE

The Contractor shall maintain the stone protection and underlying works until accepted by the Contracting Officer. When appropriate, the Contractor shall place stone protection in a timely manner to reduce risk of scour. Any material displaced prior to acceptance and due to the Contractor's negligence or neglect shall be replaced at the Contractor's expense.

### 3.6 CONTRACTOR QUALITY CONTROL

The Contractor shall establish and maintain quality control for all work performed at the job site under this section to assure compliance with contract requirements. The Contractor shall maintain records of quality control tests, inspections and corrective actions. Quality control measures shall cover all construction operations including, but not limited to, the placement of all materials to the slope and grade lines shown and in accordance with this section.

In addition to the Contractor's system to establish and maintain quality control for stone placement operations, the following information shall be recorded and promptly provided to the Contracting Officer on request:

- a. Record tonnage of stone placed in completed sections of the work and check quantity for compliance with design sections.
- b. Check for uniform thickness of material layers.

-- End of Section --







## WORK SHEET FOR GRADATION ANALYSIS OF RIPRAP METHOD A

Project Name:	Date:
Riprap Type:	Test No.
Source, Quarry, or Pit:	
Sample Location:	Test Made By:

Part 1. Weigh all stones larger than 5 pounds and record.

[illegible]

Rows (1) & (2) Enter 5 to 7 weight classes to yield approx. 75%, 50%, 30%, and 15% finer points.

Row (3) List weight of each stone. Attach additional sheets if necessary.

Row (4) Add all individual stone weights listed in each column.

## Part 2. Summary Table.

(5) WEIGHT CLASSES		(6) TOTAL WEIGHT EACH CLASS (lbs.)	(7) CUMMULATIVE WEIGHT PASSING (lbs.)	(8) TOTAL PERCENT PASSING (%)
PASSING (stone wt. in lbs.)	RETAINED (stone wt. in lbs.)			
	5 lbs.			
5 lbs.	PAN			
SAMPLE TOTAL			-----	-----

Column (5) Enter same weight classes used in Rows (1) and (2).

Column (6) Enter weights of material from Row (4)

Column (7) Add column (6) from bottom up to get cumulative weight passing.

Column (8) Divide column (7) by sample total to get total percent passing.

# WORK SHEET FOR GRADATION ANALYSIS OF RIPRAP METHOD B

Project Name:	Date:
Riprap Type:	Test No.
Source, Quarry, or Pit:	
Sample Location:	Test Made By:

Part 1. Separate rock into 5 to 7 piles, ordered by size. The largest pile should contain 2 to 5 stones. Intermediate piles between the largest stones and those smaller than 5 pounds should be approximately equal in total weight. Separate all stones before weighing.

## Part 2. Summary Table.

(1) WEIGHT CLASSES		(2)	(3)	(4)
PASSING (stone wt. in lbs.)	RETAINED (stone wt. in lbs.)	TOTAL WEIGHT EACH CLASS (lbs.)	CUMMULATIVE WEIGHT PASSING (lbs.)	TOTAL PERCENT PASSING (%)
	5 lbs.			
5 lbs.	PAN			
SAMPLE TOTAL			-----	-----

Column (1) Weight the smallest and largest stone in each pile. If weight classes overlap, adjust stones as necessary and repeat.

Column (2) Weigh the total amount of rock in each pile and record.

Column (3) Add column (2) from bottom up to get cumulative weight passing.

Column (4) Divide column (3) by sample total to get total percent passing.

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SECTION 02922

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**11/03**

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-- End of Section Table of Contents --

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SECTION 02922

SEEDING  
11/03

PART 1 GENERAL

The drawings contain landscape plans which indicate the locations for the various seed mixes. Turfed areas which have been damaged during the contract operations, shall be restored following the requirements in this section, at no additional cost to the Government.

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

U.S. DEPARTMENT OF AGRICULTURE (USDA)

AMS Seed Act (1995) Federal Seed Act Regulations Part 201

MINNESOTA DEPARTMENT OF TRANSPORTATION (MNDOT)

MNDOT 3882 (2000) Mulch Material, Standard  
Specifications for Construction

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-03 Product Data

Manufacturer's Literature;

The Contractor shall submit manufacturer's literature discussing physical characteristics, applications, guarantees, and installation of the seed, mulch, and fertilizer. The Contractor shall submit manufacturer's literature for equipment showing application and installation instructions.

SD-06 Test Reports

Seed Test;

The Contractor shall submit test reports for a purity and germination test following the Association of Official Seed Analysts (AOSA) rules for each seed mixture. The test reports shall indicate the purity percentage and germination percentage for each species.

Quantity Check;

Bag count or bulk weight measurements of material used compared with area covered to determine the application rate and quantity installed.

Maintenance Record;

Maintenance work performed, area repaired or reinstalled, diagnosis for unsatisfactory stand of grass plants.

SD-07 Certificates

Certificates of Compliance;

Prior to the delivery of materials, certificates of compliance attesting that materials meet the specified requirements. Certified copies of the material certificates shall include the following:

- a. Seed. Mixture percentage, percent pure live seed, percent germination, weed seed content, and date tested.
- b. Mulch. Composition and source.

1.3 DELIVERY, INSPECTION, STORAGE, AND HANDLING

1.3.1 Inspection

Seed shall be inspected upon arrival at the job site for conformity to species and quality. Seed materials shall be delivered in manufacturer's original, unopened containers with labels and tags intact and legible. Seed that is wet, moldy, or bears a test date more than five months old, shall be rejected. Unacceptable materials shall be removed from the job site.

1.3.2 Storage

Materials shall be stored in areas provided by the Contractor. The storage areas shall be made accessible to the Contracting Officer so that application rates can be verified. Seed, lime, and fertilizer shall be stored in cool, dry locations away from contaminants. Chemical treatment materials shall be stored according to manufacturer's instructions and not with seed.

1.3.3 Handling

Except for bulk deliveries, materials shall not be dropped or dumped from vehicles.

1.3.4 Soil Amendments

Soil amendments shall be delivered to the site in the original, unopened containers bearing the manufacturer's chemical analysis. In lieu of containers, soil amendments may be furnished in bulk. A chemical analysis shall be provided for bulk deliveries.

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## PART 2 PRODUCTS

### 2.1 SEED

Substitutions will not be allowed without written request from the Contractor and approval from the Contracting Officer. The mixing of seed may be done by the seed supplier prior to delivery, or on site in the presence of the Contracting Officer.

#### 2.1.1 Seed Classification

All seed weights are given as Pure Live Seed (P.L.S.) State-certified seed of the latest season's crop, local genotype from within 200 miles of the jobsite, shall be provided in original sealed packages bearing the producer's guaranteed analysis for mixture percentage, purity, germination, weed seed content, and inert material. Labels shall be in conformance with AMS Seed Act and applicable state seed laws.

#### 2.1.2 Permanent Seed Species and Mixtures

Permanent seed species and mixtures shall be proportioned by weight as follows:

##### SEED MIX 1

Common Name	Botanical Name	Seeding Rate (ounces per acre)
Virginia wild rye	<i>Elymus virginicus</i>	48.0
Canada wild rye	<i>Elymus canadensis</i>	48.0
Switchgrass	<i>Panicum virgatum</i>	32.0
Indiangrass	<i>Sorghastrum nutans</i>	16.0
Prairie cordgrass	<i>Spartina pectinata</i>	3.0
Black-eyed susan	<i>Rudbeckia hirta</i>	2.0

##### SEED MIX 2

Common Name	Botanical Name	Seeding Rate (ounces per acre)
Big bluestem	<i>Andropogon gerardii</i>	25.5
Little bluestem	<i>Andropogon scoparius</i>	25.5
Sideoats grama	<i>Bouteloua curtipendula</i>	25.5
Rough dropseed	<i>Sporobolus compositus</i>	1.0
Virginia wild rye	<i>Elymus virginicus</i>	25.5
Canada wild rye	<i>Elymus canadensis</i>	25.5
Switchgrass	<i>Panicum virgatum</i>	4.0
Indiangrass	<i>Sorghastrum nutans</i>	25.5
Prairie cordgrass	<i>Spartina pectinata</i>	2.0
Black-eyed susan	<i>Rudbeckia hirta</i>	3.0
Evening primrose	<i>Oenothera biennis</i>	2.0
Purple prairie clover	<i>Dalea purpurea</i>	3.0
Brown-eyed susan	<i>Rudbeckia triloba</i>	2.0
Yellow coneflower	<i>Ratibida pinnata</i>	2.0
Bergamot	<i>Monarda fistulosa</i>	1.0
Blue vervain	<i>Verbena hastata</i>	1.5
Hoary vervain	<i>Verbena stricta</i>	1.5
Sky blue aster	<i>Aster oolentangiensis</i>	0.5
Frost aster	<i>Aster pilosus</i>	0.5
Showy sunflower	<i>Helianthus laetiflorus</i>	0.5

### 2.1.3 Temporary Seed Species

Seed species for winter erosion protection, temporary surface erosion control, or overseeding shall consist of 100 pounds per acre of oats if seeded by mid-August or 15 pounds of annual rye per acre if seeded in the fall. For spring seeding use 40 pounds of oats per acre for a cover crop.

### 2.1.4 Quality

Weed seed shall be a maximum 1 percent by weight of the total mixture. Inoculant shall consist of the proper bacteria applied in the amount and manner recommended by the manufacturer to all legumes in the seed mix.

## 2.2 MULCH

### 2.2.1 Straw Mulch

Mulches shall be free from weeds, mold, and other deleterious materials. Mulch shall meet the requirements of MNDOT 3882, Type 3 or equivalent, and consist of clean grain straw (i.e., oats, wheat) that is certified by the Minnesota Crop Improvement Association (MCIA) ([www.mncia.org](http://www.mncia.org)) to be weed free. All mulch bales shall be in an air-dried condition at the time of delivery and shall have an MCIA inspection tag attached indicating that the mulch has passed inspection. Note that MNDOT Type 3 mulch shall consist of oats or wheat only. Other mulch types such as cereal rye, introduced pasture grasses, legumes, hay, etc., are not acceptable as Type 3 mulch. Dry mulching material which breaks and does not bend is unacceptable. Mulch shall have a consistency for placing with commercial mulch blowing equipment.

## 2.3 WATER

Water shall be the responsibility of the Contractor, unless otherwise noted. Water shall not contain elements in concentrations toxic to plant life.

## 2.4 SPECIAL SEEDING AND MULCHING EQUIPMENT

### 2.4.1 Equipment

Only pneumatic-tired tractors shall be permitted on areas having topsoil. Special equipment such as mulch spreaders may be used if approved by the Contracting Officer. The request for approval shall be made well in advance of the planned planting date and shall include full information on equipment and materials.

### 2.4.2 Seed Mix

The seed mix shall be planted using a Truax or equal seed drill, or a Truax "Seed Slinger" or equal broadcast seeder.

## PART 3 EXECUTION

### 3.1 INSTALLING SEED TIME AND CONDITIONS

#### 3.1.1 Notification

The Contractor shall notify the Contracting Officer 48 hours in advance of

beginning seeding or any changes in turf establishment operations.

#### 3.1.2 Seeding Time

The permanent seed mixtures shall be installed from April 20 to June 15. No finished construction area shall be left untopsoiled and unseeded during the winter months. When substantially complete areas are not seeded within the specified seeding times, a temporary winter cover shall be placed.

#### 3.1.3 Seeding Conditions

Seeding operations shall be performed only during periods when beneficial results can be obtained. When drought, excessive moisture, or other unsatisfactory conditions prevail, the work shall be stopped when directed.

When special conditions warrant a variance to the seeding operations, proposed alternate times shall be submitted for approval.

### 3.2 SITE PREPERATION

The Contractor shall verify that the finished grades are as indicated on the drawings.

#### 3.2.1 Tillage

After each area required to be seeded has been brought up to the required grade, the area shall be tilled to a depth of at least four inches by plowing, disking, harrowing, or other approved operations only during periods when, in the opinion of the Contracting Officer, beneficial results are likely to be obtained. Undulations or irregularities in the turfing area surfaces shall be leveled before the next turfing operation. Soil compacted by construction equipment or soil on compacted cut slopes or grades shall be pulverized to a minimum depth of four inches by disking or tilling before applying seed.

### 3.3 SEEDING

Prior to installing seed, any previously prepared surface compacted or damaged shall be reworked to meet the requirements of paragraph SITE PREPARATION. Seeding operations shall not take place when the wind velocity will prevent uniform seed distribution.

#### 3.3.1 Equipment

Gravity feed applicators, which drop seed directly from a hopper onto the prepared soil, shall not be used because of the difficulty in achieving even coverage.

#### 3.3.2 Broadcast Seeding

In areas inaccessible to drill seeding, seeding shall be accomplished with approved broadcast equipment. Seed shall be uniformly broadcast at the rate specified for the mix. Half the total rate of seed application shall be sown with sower moving in one direction, and the remainder with sower moving at right angles to first sowing. Seed shall be covered a maximum 1/4 inch depth by disk harrow, steel mat drag, cultipacker, or other approved device. Seed shall not be broadcast when wind speed exceeds 5 miles per hour.

### 3.3.3 Drill Seeding

Drill seeding shall be accomplished with approved equipment with drills set not more than 6 inches apart. Seed shall be uniformly drilled to a depth of 1/4 inch at the rate specified for the mix. Row markers shall be used with the drill seeder. The drilling equipment shall be maintained with half full seed boxes during the seeding operations. When slopes exceed 1 vertical on 5 horizontal, baffle plates spaced not more than 6 inches apart shall be installed in the seed box.

### 3.3.4 Firming Soil

Immediately after seeding operations have been completed, the newly seeded surfaces shall be compacted by a cultipacker, roller or other approved equipment weighing 90 to 100 pounds per foot of roller. Under certain condition, the Contracting officer will direct that rolling be delayed from 15 to 30 minutes following planting in order to avoid falling the soil in the roller or squeezing water out of furrows. If the soil is of such type that a smooth or corrugated roller cannot be operated satisfactorily, a pneumatic-tired roller shall be used. a roller having tires of sufficient size shall be used, or sufficient passes of the roller shall be made, to cover the soil surface completely. (

### 3.3.5 Applying and Anchoring Mulch

Immediately after the seeding has been completed, mulch shall be spread uniformly in a continuous blanket at a rate of 1 1/2 tons per acre. Mulch shall be spread by hand, manure spreader, modified grain combine with straw-spreader attachment, or a blower-type mulch spreader. Mulching shall be started at the windward side of relatively flat areas, or at the upper part of a steep slope, and continued uniformly until the area is covered. Mulch shall not be bunched. Immediately following the spreading, the mulch shall be anchored to the soil by a V-type wheel land packer, a scalloped-disk land packer designed to force mulch into the soil surface, or other suitable equipment. The number of passes needed, not to exceed three, will be determined by the Contracting Officer. All areas seeded on any given day must be mulched on that same day. If for whatever reason seeding is not possible on all or any portion of the project site, mulch shall still be applied to aid in erosion control and to prepare the site for the future native prairie planting by others.

### 3.4 RESTORATION AND CLEAN UP

Immediately upon completion of the seeding operation in an area, the area shall be protected against traffic or other use by erecting barricades, providing signage, or as directed. Excess and waste material shall be removed from the seeded areas and shall be disposed offsite.

### 3.5 TURF ESTABLISHMENT PERIOD

The Contractor shall be responsible for the proper care of seeded areas during the turf establishment period. The turf establishment period shall extend for 16 months after completion of the seeding operations on the entire project, unless the desired growth is established in a shorter period of time and shortening the period of Contractor's responsibility for acceptably established turf areas is authorized by the Contracting Officer.

### 3.6 MAINTENANCE

#### 3.6.1 Mowing

The seeded areas shall be mowed during the first growing season when the height of the vegetation reaches 12 inches or when weeds start to seed, whichever comes first. It may be necessary to mow more than once during the first growing season. The second season the seeded areas should be mowed once in mid-June. Mowing should be to a height of 4 inches.

#### 3.6.2 Maintenance During Establishment Period

Seeded and mulched areas shall be maintained until all work or designated portions thereof have been completed and accepted. Any damage shall be repaired, and mulch material that has been removed by wind or other causes shall be replaced and secured. Maintenance shall include protecting the site from erosion and maintaining erosion control material. The maintenance period is defined as beginning when seed/mulch have been placed onto the site and terminating at the end of the contract performance period.

#### 3.6.3 Erosion Control

The Contractor shall control erosion during the maintenance period by using ditch checks, sod swales, silt fences or other methods.

##### 3.6.3.1 Repair

If any portion of the surface becomes rilled, gullied, damaged, or destroyed, that portion shall be repaired to re-establish the area without additional cost to the government.

### 3.7 QUALITY CONTROL

The Contractor shall establish and maintain a quality control system for the work under this section, in accordance with SECTION 01451, CONTRACTOR QUALITY CONTROL, including but not limited to the following:

- (1) Materials:
  - (a) Seed
  - (b) Mulch
- (2) Seeding and mulching.
- (3) Maintenance
- (4) Repair of damaged areas.
- (5) Soil Erosion Control

A copy of the records of inspections and tests, as well as the records of corrective action taken, shall be furnished the Government as directed by the Contracting Officer.

### 3.8 FINAL ACCEPTANCE

#### 3.8.1 Preliminary Inspection

Prior to the completion of the turf establishment period, a preliminary

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site inspection will be held by the Contracting Officer. The date for the inspection(s) will be established in writing. In September of the year following the establishment of turf in each area seeded with seed Mixtures 1 and 2, there shall be at least 3 plants of the required planted variety per square foot of each required turfed area. The acceptability of the established turf shall be determined in accordance with PARAGRAPH: TURF ESTABLISHMENT PERIOD. All unacceptable stands of turf shall be repaired as soon as turfing conditions permit and repaired section will be accepted upon meeting the 3 plants of the required planted variety per square foot.

### 3.8.2 Final Inspection

A final inspection will be held by the Contracting Officer in order to determine that deficiencies noted in the above preliminary inspection(s) have been acceptably corrected. The time for the inspection will be established in writing.

-- End of Section --

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SECTION 02930

PLANTINGS

01/02

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN NURSERY AND LANDSCAPE ASSOCIATION (ANLA)

ANLA Z60.1 (1996) Nursery Stock

AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

ANSI A300 (1995) Tree Care Operations - Trees, Shrubs and other Woody Plant Maintenance

1.2 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. The following shall be submitted in accordance with Section 01330 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Plant Installation Schedule; G,GEN

Plant installation schedule shall be submitted a minimum of 30 days before beginning plant installation. Schedule shall specify planting dates, locations, and plant materials to be installed.

SD-06 Test Reports

Maintenance Record;

A record shall be furnished describing the maintenance work performed, the quantity of plant losses, diagnosis of the plant loss, the quantity and date of replacements made, and pesticide application.

### 1.3 DELIVERY, STORAGE, AND HANDLING

#### 1.3.1 Delivery

##### 1.3.1.1 Protection During Delivery

Plant material shall be protected during delivery to prevent damage.

#### 1.3.2 Storage

Plants stored on the work site shall be protected from any drying at all times. Plants shall be kept in a moist condition by watering with a fine mist spray until planted.

Storage of other material shall be in designated areas. Soil amendments shall be stored in dry locations and away from contaminants. Chemical treatment material shall be stored according to manufacturer's instructions and not with plants or other materials.

### 1.4 SCHEDULE

Planting shall be scheduled in the springtime, from after the thaw and high water to June 1. When special conditions warrant a variance to the planting operations, proposed planting times shall be submitted for approval. Planting operations shall be performed only during periods when beneficial results can be obtained. When drought, excessive moisture, frozen ground or other unsatisfactory conditions prevail, the work shall be stopped when directed.

### 1.5 INSPECTION

Plants shall be subject to inspection at any time prior to planting.

## PART 2 PRODUCTS

### 2.1 PLANT MATERIAL

#### 2.1.1 Willow Plant Cuttings

Plant cuttings (live stakes) shall be prepared from live Willow (*Salix* spp.) saplings obtained from sources to be designated by the Contracting Officer during the fall season of calendar year 2004. These designated sources will be located within 5 miles of the contract project work site. Indigobush (*Amorpha fruticosa*) saplings will also be accepted as willow saplings. Plant cuttings shall be made from dormant spring season stock, prior to bud burst, and free from obvious signs of canker diseases. Plant cuttings may be placed in cold storage prior to installation as approved by the Contracting Officer. The diameter of each plant cutting shall be not less than 3/8 inch nor greater than 3/4 inch. The length of a plant cutting shall be a minimum length of 24 inches. Each plant cutting shall have at least four healthy buds.

- a. For safety concerns, plant stock shall be cut flat (horizontal) and as close to the existing ground as possible.

- b. The Contractor shall not make brush piles out of discarded or unsuitable plant stock material (i.e., tops and branches) but shall scatter such material uniformly over the cut area at the plant source location.

## 2.2 TOPSOIL

The topsoil shall be obtained from the mandatory fine borrow areas.

## PART 3 EXECUTION

### 3.1 SITE PREPARATION

The Contractor shall verify that finished grades are as indicated on drawings, and that the placing of topsoil, the smooth grading, and the compaction requirements have been completed in accordance with Section 02300 EARTHWORK, prior to the commencement of the planting operation.

#### 3.1.1 Layout

All planting locations shall be staked by the Contracting Officer on the project site.

### 3.2 INSTALLATION

#### 3.2.1 Willow Plantings

Unless otherwise required, two rows of willow plant cuttings shall be installed as shown with a 24 inch spacing between staggered rows and between willow plant cuttings. Plant cuttings shall be planted with dibbles, star drills, steel bars or other devices to create a starter hole and to avoid damaging the bark or buds of the cuttings. Plants shall not be driven in with hammers nor will they be pushed into the ground without first making a starter hole. Plant cuttings shall be installed after the planting bed has completely thawed and before the buds burst.

Each plant cutting shall be installed with 2/3 of the willow plant cutting in the ground and the planting soil tamped firmly around it in order to produce a firm hold. No air pockets and/or voids shall remain around installed plant cuttings. The Contractor shall take care to ensure that the plant cuttings are not installed at an angle and are as plumb (vertical) as possible.

### 3.3 FINISHING

### 3.4 MAINTENANCE DURING PLANTING OPERATION

Installed plant material shall be maintained in a healthy growing

condition. Maintenance operations shall begin immediately after each plant is installed to prevent desiccation and shall continue until the plant establishment period commences. Installed areas shall be kept free of weeds, grass, and other undesired vegetation.

### 3.5 RESTORATION AND CLEAN UP

Turf areas that have been damaged from the planting operation shall be restored to original condition at the Contractor's expense. Excess and waste material shall be removed from the installed area and shall be disposed offsite.

### 3.6 MAINTENANCE

Maintenance of plant material shall include straightening plant material, pruning dead or broken branch tips; eradicating weeds, insects and disease; and removing and replacing unhealthy plants.

### 3.7 PLANT ESTABLISHMENT PERIOD

On completion of the last day of the plant installation operations, the plant establishment period for maintaining installed plants in a healthy growing condition shall commence and shall be in effect until September 15 of that year. When the plant installation operations extends over more than one plant installation season or there is a variance to the plant installation times, plant establishment periods shall be established for the contract project plant work completed, as directed. A written calendar time period shall be submitted to the Contracting Officer for the beginning of the plant establishment period; where there is more than one plant establishment period, the Contractor shall describe the boundaries of the installed planting areas covered for each period.

### 3.8 FINAL ACCEPTANCE

#### 3.8.1 Preliminary Inspection

A preliminary inspection will be conducted in mid-July following the date of the beginning of the plant establishment period in order to determine plant acceptability and the number, if any, of plant replacements. The preliminary inspection will be considered complete when the Contractor has complied with the following requirements:

- a. The survival rate for willow plantings shall be a minimum of 60 percent.

#### 3.8.2 Final Inspection

A final inspection of all installed plantings will be held after replacement plantings installation work has been completed. The final inspection will be considered final acceptance when the Contractor has complied with the following requirements:

- a. Dead, missing, and defective plant materials that do not meet the minimum survival requirements shall be replaced in accordance with Paragraph - "Preliminary Inspection" above.

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Final acceptance could be delayed until such replacement work has been satisfactorily accomplished.

- b. Plants shall be provided for replacement in accordance with PARAGRAPH: PLANT MATERIAL. Replacement plants shall be installed in accordance with PARAGRAPH: INSTALLATION. No extended plant establishment period will be required for replacement plants.

-- End of Section --